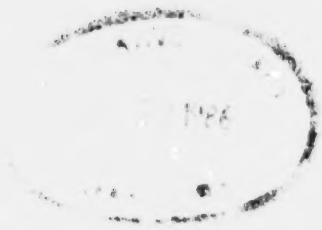
COMPENDIUM OF GRIEVANCE ARBITRATION DECISIONS

1985



Manitoba
Labour Board

MG-14005

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FILE NO. AA85-01-001

EMPLOYER: Workers' Compensation Board

UNION: Canadian Union of Public Employees, Local 1063

ARBITRATOR: Martin H. Freedman, Q.C.

APPEARANCES: Gordon McKinnon, for the Employer
Mel Myers, Q.C., for the Union

ISSUE: (1) Policy Grievance 2:3124
(2) Object of Construction: Intention of the Parties 4:4200
(3) Measurement of Probationary Period 7:5010

DATE DECISION RENDERED: January 11th, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
This was a policy grievance initiated by the Union alleging a misinterpretation of articles 9:03 and 10:05 of the collective agreement dealing with probationary employees. The articles in question read as follows:

> 9:03 Newly hired employees shall be considered as probationary employees for a maximum period of 6 months unless extended by mutual agreement.
>
> 10:05 The selected applicant shall be placed on a probationary period for a maximum of 6 months unless extended by mutual agreement.

The Employer asserted that the probationary period referred to in articles 9:03 and 10:05 could be extended by mutual agreement between the Employer and the probationary employee.

The Union contended that the probationary period could only be extended by mutual agreement between the Employer and the Union, since the collective agreement was itself an agreement between the Employer and the Union. Further if the Company's interpretation was accepted, probationary employees would be at the mercy of the Company.

AWARD:
The Board concurred with the argument put forward by the Union and ruled that the most rational interpretation was that the consent required to extend the probationary period of a new employee was the consent of the Union. The grievance was allowed.

FILE NO. AA85-01-002

EMPLOYER: Manitoba Hydro

UNION: Canadian Union of Public Employees, C.L.C. Local 998

BOARD: Jack M. Chapman. Q.C. Chairperson
Ms. Darlene Dziewit, Nominee of the Union
Ray Whiteway, Nominee of the Employer

APPEARANCES: G. D. Parkinson, for the Employer
Robb Tonn, for the Union

ISSUE: (1) Application of Seniority: Job Posting 6:2310
(2) The Skill and Ability Requirement 6:3000
(3) Ability and Qualifications Criteria 6:3300

DATE DECISION RENDERED: January 28th, 1985

EXPEDITED ARBITRATION Yes /___/ No /_X_/

CIRCUMSTANCES:
The grievor was informed that she was an unsuccessful applicant for a bulletined Clerk 5 position; a position she felt she was qualified for and therefore entitled to under Article 25.1 of the Collective Agreement (seniority and promotions). The Employer argued that while she was senior to the successful applicant she did not possess the same degree of skill and knowledge as the successful applicant. Neither had she, in the past, shown any initiative/willingness or desire to groom herself for the position. She had refused training and rotation to other positions and had not been an active participant in work related meetings or activities. The Union argued that the grievor had performed the job on a temporary basis in the past with no complaint from management. She had, therefore, demonstrated her qualifications for and competence in the position.

AWARD:
The Board concluded that the Employer had employed reasonable criteria in assessing the grievor's suitability/qualifications for the position. While the grievor may have had more seniority than the successful applicant, she was not as qualified for the position as the successful applicant as required by section 25.1 of the collective agreement. The grievance was, therefore, dismissed.

DISSENT: Darlene Dziewit, Nominee of the Union.

AUTHORITIES: Re: United Electrical Workers, Local 523, and Union Carbide Canada Ltd., (1967), 18 L.A.C. 109; Canadian Food and Allied Workers Union Local 175 and Great Atlantic and Pacific Company of Canada Ltd., et al Ont. Div. Ct. (14,056) C.C.H.; Toronto Printing Pressman and Assistants' Union No. 10 et al 83 C.L.L.C. 12,269; and others; Manitoba Hydro and C.U.P.E. -Decision of Huband et al, May 1, 1975; Manitoba Hydro and C.U.P.E. - Decision of Huband et al May 19, 1981; Manitoba Hydro and C.U.P.E. Decision of W.R. Martin, Jan. 15, 1981; Re: International Chemical Workers, Local 662 and Chemical Developments of Canada Ltd., (1972), 23 L.A.C. 281; Re: United Steelworkers, Local 6350 and Canadian Industries Ltd., (1966) 17 L.A.C. 3; and others; Canadian Labour Arbitration p. 306.

FILE NO. AA85-01-003

EMPLOYER: Inco Metals Company, Manitoba Division

UNION: United Steelworkers of America, Local 6166

BOARD: Jack M. Chapman, Q.C., Chairperson
Steve Hamon, Nomimee of the Union
Henry Monk, Q.C. Nominee of the Employer

APPEARANCES: R. J. Hansell, Q.C., for the Employer
R. A. Mayer, Q.C., for the Union

ISSUE: (1) Discipline: Health and Safety 7:3621
(2) Refusal to Follow Instructions 7:3610

DATE DECISION RENDERED: January 30th, 1985

EXPEDITED ARBITRATION Yes [ ] No [x]

CIRCUMSTANCES:
The grievor received a written reprimand for failing to follow the proper instructions for the safe blasting of a chunk in a mine. The Union argued that the grievor had received instructions relating to the blasting of a "breast", not the blasting of a "chunk" and had followed the appropriate procedures for the blasting of a chunk. The company argued that the blasting instructions given to the grievor applied in both situations and by not following them, he had place himself, his co-workers and company property in danger.

AWARD:
The grievance fails. The Board ruled that given the extreme hazards of the mining profession, all safety instructions and regulations communicated to an employee by a responsible person in authority must be complied with.

DISSENT: Steve Hamon, Nominee of the Union.

FILE NO. AA85-02-001

EMPLOYER: Bristol Aerospace Limited, St. James Plant

UNION: Canadian Aerospace Workers, Local 5 C.A.I.M.A.W.

BOARD: Jack M. Chapman. Q.C.
Professor Mark Gabbert, Nominee of the Union
R. McNicol, Nominee of the Employer

APPEARANCES: G. D. Parkinson, Counsel for the Employer
Messrs. S. Soronow and D. Gisser, Counsel for the Union

ISSUE: (1) Layoff 6:2200
(2) Bumping 6:2330
(3) The Skill and Ability Requirement 6:3000
(4) Trial Training and Familiarization Periods 6:3230

DATE DECISION RENDERED: February 1st, 1985

EXPEDITED ARBITRATION Yes / / No /X/

CIRCUMSTANCES:
An employee who was about to be laid off bumped into a position in the resistance welding department. After a 5 day trial period the employee was laid off. The company alleged that the grievor did not appear to have the knowledge and experience required to perform the work of a resistance welder. The union contended that the grievor, who had had previous welding experience was not given a fair opportunity to demonstrate his skills. The company argued that under section 8:04 of the collective agreement, if an employee wished to bump, at the time of the bump he must be able to perform the work he is bumping into with reasonable speed and aptitude.

AWARD:
The Board concluded that the grievor did not in fact have the knowledge and experience required to perform the work of a resistance welder with a reasonable degree of speed. To become proficient in the job, the grievor would require extensive training which the company was under no obligation to provide. The company, therefore, had the right to lay off the grievor. The grievance was dismissed.

DISSENT: Professor Mark Gabbert, Nominee of the Union

AUTHORITIES: International Union Of Electrical Radio and Machine Workers, Local 542 and RCA Victor Co. Ltd. (1972) 22 L.A.C. (329; Palmer, Collective Agreement Arbitration in Canada (2d) edition; Brown and Beatty, Canadian Labour Arbitration, pg 314; United Automobile Workers, Local 439 and Massey Ferguson Ltd., 13 L.A.C. 202; Reynolds Aluminum Co. of Canada and International Molders and Allied Workers Union, Local 2826 L.A.C. (2d) and others.

FILE NO. AA85-02-002

EMPLOYER: Government of Manitoba

UNION: Manitoba Government Employees' Association

BOARD: Martin H. Freedman, Q.C.
(Board members not listed.)

APPEARANCES: Ronald S. Cann for the Government
Grant Rodgers fop the M.G.E.A.

ISSUE: (1) Discharge: Incompetence 7:3510
(2) Scope of Review 7:4100

DATE DECISION RENDERED: February 26, 1985

EXPEDITED ARBITRATION Yes / / No / x /

CIRCUMSTANCES:
The grievor alleges that he was dismissed from employment without just cause. The employer argued the grievor could not discharge his duties at a satisfactory level, therefore, they had the right to dismiss him. The Association acknowledged that there were problems with the grievor's performance. The responsibility for these problems did not, however, rest solely with the grievor. Part of the responsibility, the Association argued, lay with his immediate supervisor who had created a very unpleasant, stressful work situation for the grievor.

AWARD:
The grievance fails in part. Evidence presented at the hearing suggested that the department gave ample notice that the grievor's work had to improve and provided him with every opportunity to improve his performance. When the grievor failed to improve his performance, the Board ruled that the department had just cause for dismissing him. The Board further ruled, however, that because of his 16 years of satisfactory performance and seniority, and the peculiar circumstances of this case, an effort had to be made to transfer the grievor to a different assessing office.

AUTHORITIES: M.G.E.A. and the Government of Manitoba, grievance of George Petrycky, Arbitration Award, Oct. 28,. 1983, S.G. Sigurdson, Arbitrator; Re: Harold R. Stark Ltd., and United Association of Journeymen and Apprentices 1 L.A.C. 405 (1972); Brown and Beatty.

FILE NO. AA85-03-001

EMPLOYER: City of Brandon Police Commission

UNION: City of Brandon Police Association

BOARD: D.E. Bowman Q.C. Chairperson
M Myers, Nominee of the Union
G. T. Williams, Nominee of the Employer

APPEARANCES: A. A. Hirschfield, Q.C. for the Employer
J. P. Janzen for the Union

ISSUE: (1) Discipline: Suspension (over 30 days): Criminal Charges 7:3424
(2) Scope of Review 7:4100
(3) Reasonableness of Penalty 7:4300

DATE DECISION RENDERED: March 6th, 1985

EXPEDITED ARBITRATION Yes / / No / X /

CIRCUMSTANCES:
The grievor, charged under Section 246.1 of the Criminal Code, was suspended without pay pending the outcome of the trial. The Police Association requested that the Board of Police Commissioners provide legal counsel for the grievor in the criminal proceedings. The Board denied the request. Grievance proceedings alleging unjust suspension and an improper denial of the request to provide legal counsel were initiated.

The Board of Police Commissioners argued that the decision to suspend the officer was a management right. The Board submitted that the publicity given by the Brandon press to the charge against the grievor rendered the grievor's presence on the force a substantial embarrassment to the force and made the suspension imperative. The Board further submitted that the department/City of Brandon would only agree to provide counsel for "the defence of action initiated against an employee as a result of the performance of his/her duties." It was not part of a Constable's duties to conduct himself as to result in a charge of sexual misconduct.

The Union/Association argued that under the terms of the collective agreement the Board could have imposed a less severe penalty on the grievor such as station duty where the grievor would not come into contact with the general public and where his actions could be controlled to prevent any further embarrassment to the force. The Union further contended that it was unfair to deprive the officer of his livelihood for an extended period of time without any proof of his guilt being advanced. With respect to the issue of legal counsel, the Union submitted that a letter of understanding attached to the collective agreement made clear the obligation of the Employer to provide officers with counsel for the defence of action initiated against them during the performance of their duties (i.e. during his working hours).

AWARD:

The grievance with respect to the denial to engage and pay legal counsel was disallowed. The Board concluded that the collective agreement and the letter of understanding contemplated that the Board of Police Commissioners may decline the request for legal counsel if they are of the opinion that the incident in question did not arise from the performance of an officer's duty. The letter of understanding further contemplated that such a ruling may be grieved at a later date; in this case, after the final outcome of the grievor's trial.

With respect to the issue of suspension, the grievance was allowed. The evidence presented at the hearing by the Board of Police Commissioners did not show that the very severe discipline of suspension without pay was warranted when the collective agreement allowed the Board to impose less draconian penalties such as station duty or suspension with pay. The Arbitration Board ordered the reinstatement of the grievor with his usual pay and allowances.

AUTHORITIES: Phillips Cable Ltd. and United Steelworkers, Local 7276, 5 L.A.C. (2d) 274; United Steelworkers and International Nickel, 1969, 20 L.A.C. 51; Saunders Aircraft Corp. vs. United Automobile Workers Local 1840, 1973, 5 L.A.C. (2d) 10.

FILE NO. AA85-03-002

EMPLOYER: Morden Coat Ltd.

UNION: Amalgamated Clothing and Textile Workers Union, Local 459

ARBITRATOR: Jack M. Chapman. Q.C.

APPEARANCES: Mark Newman, for the Employer.
Robb Tonn, for the Union.

ISSUE:

(1) Application of Seniority: Layoff 6:2200
(2) Discipline: Discharge: Leave of Absence 7:3120
(3) Scope of Review 7:4100

DATE DECISION RENDERED: March 13, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
Upon her return from an extended vacation, the grievor was allegedly informed by her employer that her services were not required at the time due to a shortage of work. When it was ascertained that less senior employees were still working at the factory, a grievance alleging improper layoff was initiated. The grievor was subsequently discharged. The company argued that the grievor had not received permission to take an extended vacation. She had not, therefore, been laid off due to a shortage of work but had been discharged for taking an unauthorizeed leave of absence. The union contended that by virtue of the fact that the employer did not explicitly deny her request for a longer vacation period, the grievor did have permission to take an extended leave of absence. The company's decision to discharge the grievor did not come until well after she returned from her vacation and it came as a result of the grievor's attempt to exercise her seniority rights under the collective agreement.

AWARD:
The arbitrator ruled that evidence pesented at the hearing supported the union's contention that the grievor had not been discharged for taking an unapproved leave of absence but for attempting to exercise her seniority rights under the collective agreement. The arbitrator ordered immediate reinstatement.

AUTHORITIES: Manitoba Court of Appeal, Miami Fashions (1979) Ltd. vs Amalgamated Clothing and Textile Workers Local 459 26 Man. R(2d) 288; Re: Indal Products Ltd. and United Steelworkers, Local 2729 10 L.A.C. (2d) 374; Re: Black Diamond Cheese and Canadian Food & Allied Workers, Local P-688, 3 L.A.C. 399; Re: Canada Safeway Ltd. and Retail Clerks Union, Local 409 3 L.A.C. (3d) 193; Kysor of Ridgetown 18 L.A.C. 383; Re: United Electrical Workers, Local 523. and Union Carbide Canada Ltd. 18 L.A.C. 109; Federated Co-operatives Limited and United Food and Commercial Workers International Union, Local 216 Re: Kenyon grievance (unreported: Chapman, November 26, 1982); Re: Reynolds Aluminum Co. Canada Ltd. and International Molders and Allied Workers Union, Local 28 5 L.A.C. (2d) 251; Collective Agreement Arbitration in Canada....

FILE NO. AA85-03-003

EMPLOYER: Manitoba Government

UNION: Manitoba Government Employees' Association

BOARD: Martin H. Freedman, Q.C.
(Board members not listed.)

APPEARANCES: Stan Smith, for the Employer
Grant Rodgers, for the Union

ISSUE: (1) Limits to the Arbitration of Grievances: Arbitrability 2:3000
(2) Collective Agreement Limitations 2:3100

DATE DECISION RENDERED: March 25th, 1985

EXPEDITED ARBITRATION Yes / / No / x /

CIRCUMSTANCES:
The grievor was reclassified from an MP004 to an LP3. Through a decision approved by the Treasury Bord, the grievor's salary remained at the MP004 level. Subsequently, a decision was made by the Civil Service Commission to freeze the grievor's wages (for a maximum of 2 years) until such time as the maximum salary assigned to the LP3 classification equaled or exceeded the salary assigned to the MP004 classification. The union argued that the wage freeze constituted a violation of the pay plan which was part of the collective agreement.

AWARD:
The Arbitrator concluded that the real basis of the grievance was not an alleged violation of the collective agreement but an alleged wrongful action taken by the Civil Service Commission contrary to a decision approved by the Treasury Board. The Arbitrator then ruled that since he did not have jurisdiction to hear disputes involving the application of the Civil Service Act, the grievance was unarbitrable.

FILE NO. AA85-03-004

EMPLOYER: Venture Manitoba Tours Limited

UNION: Manitoba Government Emloyeees' Association

BOARD: Martin H. Freedman, Q.C.
(Board members not listed.)

APPEARANCES: Stan Smith, for the Employer
Grant Rodgers, for the Union

ISSUE: Interest Arbitration; Wage Increase

DATE DECISION
RENDERED: March 25th, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
Parties to negotiations to settle the terms and conditions of a 2 year collective agreement could not agree on the wage increase for the 2nd year of the agreement. Under Article 45 of the Collective Agreement, an Arbitrator was appointed to settle the wage increase issue. The Union's position was that there should be a 25¢/hour increase to be applied to all pay points listed in Appendix A2 of the Collective Agreement, effective Nov. 1, 1984. The position of the employer was that there should be no incease.

AWARD:
Upon examination of evidence of the employer's ability to pay, industry comparisons and the rising cost of living, the arbitrator ruled that some increase in pay was warranted. It should be somewhat less than 25¢/hour, however, since the employees of this particular hotel received 'special benefits' that other hotel industry employees did not receive. The Arbitrator awarded a flat increase of 20¢/hour to be applied to all pay points for the period beginning November 1st, 1984 and ending October 31st, 1985.

AUTHORITIES: Justice Durbin, Metro Toronto Board of Education Arbitration 1976

FILE NO. AA85-03-005

EMPLOYER: Flyer Industries Ltd.,

UNION: Canadian Association of Industrial, Mechanical and Allied Workers, Local 3

ARBITRATOR: Jack M. Chapman, Q.C.

APPEARANCES: T. Fultz, for the Employer
S. G. Soronow, for the Union

ISSUE:
(1) Discipline: Suspension (under 30 days) Absenteeism 7-3100
(2) Discipline: Discharge: Lateness 7:3140
(3) Company Rules 4:1500;
(4) Warnings 7:4416
(5) Discrimination 7:4414
(6) Scope of Review 7:4100

DATE DECISION RENDERED: March 27th, 1985

EXPEDITED ARBITRATION Yes / / No /X/

CIRCUMSTANCES:
The grievor was suspended and subsequently discharged from employment after receiving his fourth notification of a minor offence (for habitual lateness). The Company argued that the terms of the Collective Agreement were clear; if an employee had received 4 notifications of minor offences he could be discharged. The Company further contended that the grievor had been warned about his persistant lateness and only when his record failed to improve was the notification issued and the grievor discharged. The Union argued that in some cases the grievor's lateness was clearly beyond his control, (example. flat tire). The Union further contended that the Company could not establish a pattern of habitual lateness since no clear definition of habitual lateness was contained in the Collective Agreement. Finally, the Union argued that the grievor had been discriminated against since the penalties prescribed in the Collective Agreement for minor offences were not imposed on a consistent basis.

AWARD:
The Grievance succeeds in part. The Arbitrator ruled that evidence presented at the hearing tended to support the Union's case. In some instances it appeared that the grievor's lateness was clearly beyond his control. While the grievor's punctuality record was poor, the Company could not establish a pattern of habitual lateness nor had the company warned the grievor of the possible consequences of failing to improve his record. In addition, the evidence presented at the hearing clearly established that penalties for minor offences were not imposed on a consistent basis. The Arbitrator ordered the discharge changed to a six month suspension to be followed by a six month probationary period upon the grievor's return to work. If the grievor's record failed to improve during the probationary period the company could discharge the employee. The Arbitrator further stipulated that this award constituted a clear and unequivocal warning to the employee to improve his punctuality record.

AUTHORITIES: Collective Agreement Arbiration in Canada; Canadian Labour Arbitration; Re: Lumber and Sawmill Workers Union, Local 537 and KVP Co. Ltd. 1965 16 L.A.C. 73

FILE NO. AA85-04-001

EMPLOYER: City of Winnipeg

UNION: Canadian Union of Public Employees, Local 500

BOARD: Martin H. Freedman, Q.C.
(Board members not listed.)

APPEARANCES: Marvin Samphir, for the Employer
Mel Myers, Q.C., for the Union

ISSUE: (1) Discipline: Leave Work Without Permission 7:3130
(2) Nature of Disciplinary Sanctions 7:4210
(3) Entitlement to wages 8:1000
(4) Withholding Wages 8:1420

DATE DECISION RENDERED: April 1, 1985

EXPEDITED ARBITRATION Yes / ___ / No / x /

CIRCUMSTANCES:
The grievor was deducted 4 1/2 hours of pay for allegedly leaving his worksite without permission and for failing to account for his absence. The Union contended that the Company had failed to institute a proper investigation of the incident prior to the imposition of a disciplinary penalty in violation of article 14 of the agreement. The company argued that the deduction of 4 1/2 hours pay from the grievor's pay cheque did not constitute a disciplinary action. The grievor did not work those 4 1/2 hours, therefore, he should not be paid.

AWARD:
The Board concluded that the deduction of 4 1/2 hours pay from the grievor's pay cheque did not constitute a disciplinary action. The Board ruled that the company did not have to pay wages for work not performed. The grievance was dismissed.

AUTHORITIES: Canadian Labour Arbitration, 2nd edition, 467, 470, 471, 542; Re: Board of Education for the Borough of Scarborough and Ontario Secondary School Teachers' Federation, District 16 (26 L.A.C. 2d 160, at p. 171) Re: United Automobile Workers, Local 673 and Douglas Aircraft Co. of Canada Ltd. 19 L.A.C. 73

FILE NO. AA85-04-002

EMPLOYER: The Manitoba Teachers' Society

UNION: The Manitoba Teachers' Society Employees Union, C.U.P.E., Local 500

BOARD: Jack M. Chapman, Q. C.
D'Arcy McCaffrey, Q.C., Nominee for the Employer
Ms. L. M. Brooks, Nominee of the Union

APPEARANCES: Aubrey Asper, for the Employer
Ms. Sandra Oakley, for the Union

ISSUE: (1) Application of Seniority: Job Posting 6:2310
(2) The Skill and Ability Requirement 6:3000
(3) Ability and Qualifications Criteria 6:3300

DATE DECISION RENDERED: April 23. 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
The grievor alleges that a less senior employee was awarded the position of Intermediate Secretary, a position she felt she was qualified for and entitled to under the seniority provisions of the collective agreement. The company argued that shorthand, a skill not possessed by the grievor, was a requirement for the job. The argument presented on behalf of the grievor was that shorthand was not a valid requirement for the job.

AWARD:
The Board concluded that shorthand was a bona fide requirement for the job. Since the grievor did not appear to have even minimal shorthand skills she did not have the necessary qualifications for the position and was, therefore, not entitled to it. The grievance was dismissed.

FILE NO. AA85-04-003

EMPLOYER: Seven Oaks General Hospital

UNION: Canadian Union of Public Employees, Local 2509

ARBITRATOR: Jack M. Chapman, Q.C.

APPEARANCES: Paul Teskey and others for the Employer
M. Myers, for the Union

ISSUE:
(1) Discipline: Suspension (under 30 days): Work Performance 7:3500
(2) Discipline: Suspension (under 30 days): Dishonesty 7:3300
(3) Rehabilitative Potential 7:4422
(4) Scope of Review 7:4100
(5) Reasonableness of Penalty 7:4300

DATE DECISION RENDERED: April 23, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
The grievor was suspended without pay for 2 days for allegedly failing to follow proper record keeping procedures and for misrepresenting the state of completion of her work in order to receive permission to take a day's leave of absence.

The Company contended that the grievor had been warned in the past to follow established record keeping procedures and to keep her work up to date. Delays in her area had resulted in difficulty preparing budgets. When her work failed to improve, the company felt entitled to impose a more severe disciplinary penalty.

AWARD:
Evidence presented at the hearing suggested the grievor had in fact failed to follow established record keeping procedures. There was no evidence, however, that the grievor had deliberately misrepresented the state of completion of her work. The company had failed to check all of her work before coming to the conclusion it was incomplete (some was in her desk, some elsewhere). The Arbitrator concluded, therefore, that a letter of warning, to be kept in her personnel file, constituted a sufficient disciplinary penalty. The suspension was rescinded.

AUTHORITIES: Re: City of Dartmouth and Nova Scotia Union of Public Employees (1980) 27 L.A.C. (2d) 97; Re: Pepsi Cola Ltd. and Soft Drink Workers Joint Local Executive Board (1977) 15 L.A.C. (2d) 397; Re: Great Atlantic and Pacific Company Ltd. and Retail Wholesale and Department Store Union, Local 414 (1982) 3 L.A.C. (3d) 403.

FILE NO. AA85-04-004

EMPLOYER: Simplot Chemical Company Ltd.,

UNION: United Steelworkers of America Local 7184

BOARD: Martin H. Freedman, Chairman
E. W. Olson, nominee for the Employer
A Patterson, mominee for the Union

APPEARANCES: David Newman, for the Employer
Robb Tonn, for the Union

ISSUE: (1) Discipline: Discharge: Dishonesty 7:3300
(2) Doctrine of Culminating Incident 7:4310
(3) The Final Incident 7:4312

DATE DECISION RENDERED: April 24th, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
The grievor was dismissed from employment for allegedly lying to company officials about the directions given to him by a doctor after a workplace accident. The Company contended that the grievor had told a company official that the doctor told him to stay home from work. When the company contacted the doctor and discovered this was not the case, it was concluded that the grievor had been dishonest. After consideration of his entire work record he was discharged. The Union and the grievor argued that the doctor had told him that his injuries were not incapacitating but if he did not feel well enough to attend work, he might stay home.

AWARD:
The grievance succeeds. The Board after a consideration of the evidence presented at the hearing concluded that the Employer had not proven that the grievor had been dishonest. It appeared to the Board that the doctor who had examined the grievor had told him to stay home if he did not feel well enough to work. The Board, therefore, ruled that the grievor did not commit an act which warranted disciplinary action. The company was ordered to reinstate the employee in his former position.

DISSENT: E. W. Olson, Q. C. Nominee of the Employer.

AUTHORITIES: Re Fruehauf Trailer Company of Canada and United Automobile Workers 8 L.,A.C. (2d) 268.

FILE NO. AA85-04-005

EMPLOYER: Abex Industries Limited, Amsco Canada Division

UNION: United Steelworkers of America, Local 1639

ARBITRATOR: Jack M. Chapman. Q.C.

APPEARANCES: Thomas R. Foy, for the Employer
E. G. Knapp, for the Union

CASE #1
ISSUE: (1) Discipline: Suspension (under 30 days) Dishonesty 7:3300
(2) Weighing of Evidence 3:5100

CASE #2
ISSUE: (1) Application of Seniority: Job Posting 6:2310
(2) Non Unit Employment 6:1120

DATE DECISION RENDERED: April 30th, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES RE: CASE #1:
The grievor was suspended for one week without pay for allegedly performing a test on behalf of another employee. The other employee subsequently obtained his certified welder status. The union and the grievor argued that the grievor did not perform the test for the other employee.

AWARD:
The grievance succeeds. The Board concluded that the employee who had accused the grievor of performing his test was not a credible witness. Not one iota of evidence existed to prove that the grievor had performed the test. Compensation was awarded for the week that the grievor had been suspended.

CIRCUMSTANCES RE: CASE #2:
The grievors alleged that an employee from outside the bargaining unit and without seniority was awarded a bargaining unit position in violation of Article 7.2 of the Collective Agreement. The company argued that the employee who was awarded the position had accumulated 13 years of seniority while employed in a bargaining unit position. When he subsequently transferred to a position outside the bargaining unit he did not, according to the company lose his seniority. (Article 7:11 of the Collective Agreement).

AWARD:
The grievance fails. The arbitrator concluded that the terms of the collective agreement concerning the accumulation and loss of seniority were clear. A transfer outside the bargaining unit would not result in a loss of seniority. The arbitrator, therefore, ruled that since the employee who had been awarded the position had accumulated 13 years of seniority while employed in a bargaining unit position (more than that of the grievors) he was entitled to the position.

FILE NO. AA85-04-006

EMPLOYER: International Fur Dressers and Dyers Ltd.,

UNION: United Food and Commercial Workers International Union, Local 111

ARBITRATOR: Jack M. Chapman Q.C.

APPEARANCES: E. Shewchuk, for the Employer
C. Trigwell, for the Union

ISSUE: (1) Discipline: Discharge: Insufficient or Careless Work 7:3520
(2) Employees' Rehabilitative Potential: 7:4422

DATE DECISION RENDERED: April 30th, 1985

EXPEDITED ARBITRATION Yes / / No / /

CIRCUMSTANCES:
The grievor had been told to salt some rabbit skins before he went home. He neglected to do so. The next day, when he arrived at work he was fired. The company argued that this type of incident had occurred in the past and the grievor had been warned that if it happened again his employment would be terminated. The union argued that the grievor had simply forgotton to salt the skins. In these circumstances, according to the union the grievor should not have been discharged.

AWARD:
The grievance succeeds in part. The Board concluded that because of the grievor's previous work record some disciplinary action was justified. The Board ruled, however, that since the grievor did not act intentionally or maliciously, dismissal was too harsh a penalty. A one week suspension without pay was substituted for the discharge.

AUTHORITIES: Canadian Labour Arbitration

FILE NO. AA85-04-007

EMPLOYER: Sherritt Gordon Mines Limited

UNION: United Steelworkers of America, Local 8144

BOARD: Jack M. Chapman. Q.C.
Harold Piercy, nominee of the Employer
Eugene Laye, nominee of the Union

APPEARANCES: Messrs W. Ritchie and W. Hamilton, Counsel for the Employer
R. Mayer, Counsel for the Union

ISSUE: (1) Policy Grievance 2:3124
(2) Object of Construction: Intention of the Parties 4:2100
(3) Pension, Insurance and Welfare Plan 4:1400

DATE DECISION RENDERED: April 30, 1985

EXPEDITED ARBITRATION Yes / / No /X/

CIRCUMSTANCES:
This was a policy grievance initiated by the Union alleging a mis-interpretation/mis-application of Article 29 of the Collective Agreement dealing with the establishment of a long term disability benefit program. The plan became effective June 1st, 1984.

The Union argued that when the plan became effective on June 1st, 1984, all persons on sick leave as of June 2, 1983 should have begun to receive benefits; "effective" meaning benefits should have been payable as and from that date.

The Employer argued that the term "effective" as used in the collective agreement meant that the L.T.D., benefit plan simply came into being. No benefits should be paid for events which transpired before the program was in existance.

AWARD:
The Board concluded that the clear and simple meaning of the term "effective" as used in article 29 was the date the plan started and when the eligibility qualifications and requirements would commence to be calculated. The grievance was dismissed.

DISSENT: Eugene Laye, Nominee of the Union.

AUTHORITIES: Re: Bendix Automotive of Canada Ltd. and United Automobile,. Areospace and Agricultural Implement Workers of America (U.A.W.) Local 195 20 D.L.R. (3d) 151

FILE NO. AA85-05-001

EMPLOYER: Premier West Peat Moss Ltd.,

UNION: United Food and Commercial Workers International Union, Local 111

BOARD: Martin H. Freedman, Q.C.
(Board members not listed.)

APPEARANCES: Dan Biglow, for the Employer
Bruno Zimmer and others, for the Union

ISSUE: (1) Overtime Work 8:2130
(2) Application of Seniority 6:2000
(3) Object of Construction: Intention of the Parties 4:2100

DATE DECISION RENDERED: May 2nd, 1985

EXPEDITED ARBITRATION Yes / x / No / /

CIRCUMSTANCES:
The Union and the grievors alleged that the Employer had improperly allocated Saturday work to casual rather than regular employees in an attempt to avoid paying overtime premiums. The Union argued that according to Section 12.05 (b) of the Collective Agreement, the Employer should have attempted to call in senior employees in order of seniority before work was assigned to workers not in the bargaining unit. The union further argued that if the employees who accepted the Saturday work had worked their weekly 40 hours, they would have been entitled to overtime (articles 15:01; 15:03; 15:08). The Company argued that under Article 3:01 of the Collective Agreement (the management's rights clause) they had the right to direct the operations of the company and to decide what constituted overtime.

AWARD:
Upon examination of the Collective Agreement, the Board concluded that work done for the company on Saturday or Sunday constituted overtime work and any such overtime work was to be assigned to members of the bargaining unit on the basis of seniority. The grievances were allowed and compensation for lost overtime work was ordered to be paid to the grievors.

AUTHORITIES: Canadian Labour Arbitration p.256

FILE NO. AA85-05-002

EMPLOYER: Manitoba Civil Service Commission

UNION: Manitoba Government Employees' Association

ARBITRATOR: S. Glen Sigurdson

APPEARANCES: Ms. Zabloski, for the Employer
Ian Cuthbertson, for the Union

ISSUE: (1) Discharge Distinguished 7:7000
(2) Resignation 7:7100

DATE DECISION RENDERED: May 7th, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
After being absent from work due to an alcohol related illnes and a car accident which resulted in a charge under the Liquor Control Act the grievor claims she was forced to resign from her employment. The Union argued that the grievor was constructively dismissed without just cause. The company argued that while there was some discussion between the grievor and her supervisor concerning the possibility of resignation, in no way was the grievor coerced or intimidated into resigning.

AWARD:
The grievance fails. Evidence presented at the hearing indicated that the grievor had intended to resign and had taken several objective steps consistent with that intention. The Board, therefore, concluded that the grievor's resignation was voluntary. The claim of unjust dismissal was dismissed.

AUTHORITIES: Brown and Beatty, 393-394.

FILE NO. AA85-05-003

EMPLOYER: City of Thompson

UNION: United Steelworkers of America, Local 8223

ARBITRATOR: S. Glenn Sigurdson

APPEARANCES: Mr. Plaskett
Mr. Parkinson

ISSUE: (1) Management's Rights 4:2310
(2) Management's Duty to Act Fairly 4:2320
(3) Temporary casual and Part Time Employees 5:1124

DATE DECISION RENDERED: May 8th, 1985

EXPEDITED ARBITRATION Yes / ___ / No / x /

CIRCUMSTANCES:
The grievor was awarded a position as a temporary junior clerk subject to a satisfactory medical examination. Upon the completion of her examination, a physician retained by the city concluded that the grievor was not a fit candidate for employment at the time. She was seriously ill with conditions including uncontrolled hypertension, diabetes and a serious obesity problem. On that basis she was denied the position and it was awarded to another applicant. The union argued that management did not have the right to deny the position to the grievor by reason of the grievor's medical condition as reported by the company doctor. The city argued that under Article 13 of the collective agreement (the management rights clause) they could refuse to hire the grievor for any reasons they considered appropriate including medical reasons.

AWARD:
The grievance fails. The arbitrator concluded upon examination of the collective agreement that the grievor, as a part time employee, did not appear to have any seniority rights on which she could rely. The Board further concluded that given the evidence of the seriousness of the grievor's condition (supported by statements from the grievor's doctor and a specialist) and the uncertainty surrounding the time required to bring the condition under control, it was reasonable at the time for management to refuse to award the grievor the position and to award it to someone else.

FILE NO. AA85-05-004

EMPLOYER: Inco Ltd.

UNION: The United Steelworkers of America, Local 6166

BOARD: S. Glenn Sigurdson, Chairperson
H. B. Monk, Q.C. Nominee of the Employer
Robert Hilliard, Nominee of the Company

APPEARANCES: R. J. Hansell Q.C. for the Employer
R. A. Mayer for the Union

ISSUE:
(1) Discipline: Discharge: Unsuitablility 7:3530
(2) Procedural Requirements and the Power to Discipline 7:2100
(3) Scope of Review 7:4100
(4) Reasonableness of Penalty 7:4300

DATE DECISION RENDERED: May 17th, 1985

EXPEDITED ARBITRATION Yes / / No /X/

CIRCUMSTANCES:
An employee was discharged as an unsuitable employee after an alleged infraction of safety procedures involving improper drilling practices. At the time of the dismissal the grievor was already in Step 4, the final step of the company's progressive discipline program . The Union and the grievor argued that the grievor was dismissed without just cause since the company failed to institute a proper investigation of the incident when it occurred. Evidence of the infraction was subsequently destroyed.

AWARD:
The grievance succeeds in part. The grievor admitted he had been drilling improperly. The Board, therefore, concluded that in light of the grievor's dismal safety record, some discipline was warranted. Dismissal was considered too severe a penalty, however, given the many years the grievor had been employed by the company. The Board ordered that the grievor be reinstated at the first available position for which he was qualified, other than as a driller, effective May 10th, 1985. (This constituted a suspension of 7 months). The grievor's drilling priviledges were suspended for a further 5 month period.

DISSENT: H.B. Monk, Q.C. Comany nominee
Robert Hilliard, Union nominee

FILE NO. AA85-05-005

EMPLOYER: Flyer Industries Ltd.,

UNION: Canadian Association of Industrial, Mechanical and Allied Workers, Local No. 3

ARBITRATOR: Jack M. Chapman, Q.C.

APPEARANCES: E. Tawkin for the Employer
R. Gutkin for the Union

ISSUE: Classification 3:2414

DATE DECISION RENDERED: May 17th, 1985

EXPEDITED ARBITRATION Yes / / No / /

CIRCUMSTANCES:
A number of employees claimed that they were incorrectly classified. The union contended that the employees had been classified as Storesman (group 13, 9.51/hr) when in fact they were performing the work of Stockkeeper (group 9, 9.96/hr) or Plant Stockkeeper (group 5, 10.83/hr).

AWARD:
The grievance fails. Upon an examination of the actual work performed by the grievors, the arbitrator concluded that there was some overlapping of the work done by a storesman with some of the work done by a stockkeeper. The storesmen were not, however, performing the essential and primary functions of a stockkeeper (i.e. stockkeeping) hence they could not be reclassified to the higher level.

AUTHORITIES: Canadian Labour Aribtration p.131; Collective Agreement Arbitration in Canada, p 472 -479.

FILE NO. AA85-05-006

EMPLOYER: Fiat Products Ltd.,

UNION: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)

ARBITRATOR: Jack M. Chapman, Q.C.

APPEARANCES: L. J. Donnelly for the Employer
H. Mitic for the Union

ISSUE:
(1) Discipline: Discharge: Fight, Assault 7:3430
(2) Company Rules 4:1500
(3) Scope of Review 7:4100
(4) Reasonableness of Penalty 7:4300
(5) Provocation 7:4412

DATE DECISION RENDERED: May 30th, 1985

EXPEDITED ARBITRATION Yes /x/ No / /

CIRCUMSTANCES:
The grievor was dismissed from employment after the company alleged he had been involved in a fight on company property and had threatened the wife and children of another employee (violation of rules 6, 11, 13 of the Collective Agreement). The union contended that the grievor had been provoked by the other employee involved in the incident and that the threats against the employee's family were made only after the grievor himself had been threatened. The company argued that the grievor had been involved in a similar incident in the past and had been warned that if it happened again, he could be dismissed.

AWARD:
The grievance succeeds in part. After the presentation of evidence, the arbitrator concluded that the grievor had been provoked by the other employee. He was not, however, justified in reacting in a violent manner. That he did so after being expressly warned not to, justified some disciplinary action. Since it became evident during the hearing that the company had not disciplined other employees involved in similar incidents in a similar fashion, the arbitrator ruled that dismissal was too harsh a penalty. The company was ordered to reinstate the grievor and to impose a 2 week suspension without pay.

AUTHORITIES: Brown and Beatty, 406, 407

FILE NO. AA85-05-007

EMPLOYER: Inco Ltd. Manitoba Division

UNION: United Steelworkers of America, Local 6166

ARBITRATOR: G. Campell MacLean, Q.C.

APPEARANCES: Milton Christiansen and others for the Employer
Patrick Fogarty and others for the Union

ISSUE: (1) Discipline: Suspension (under 30 days): Insubordination 7:3600
(2) Refusal to Follow Instructions 7:3610

DATE DECISION RENDERED: May 30th, 1985

EXPEDITED ARBITRATION Yes / x / No / /

CIRCUMSTANCES:
The grievor was suspended for 7 hours without pay after refusing a temporary work assignment. The union argued that a violation of the collective agreement occurred when 2 junior employees were given temporary work assignments which paid more. The grievor, contended the union, had a right in such circumstances to refuse the work. The company contended that the suspension was the appropriate response to what it saw as the grievor's insubordination.

AWARD:
The grievance fails. The arbitrator concluded that the grievor should have performed the work he was asked to perform and then grieve. It was not up to the grievor to interpret the collective agreement and to decide it had been violated. That would be determined through the grievance procedures outlined in the collective agreement. The arbitrator, therefore, ruled that the employee's refusal to work was improper and upheld the suspension.

AUTHORITIES: Ford Motor Co. 3 L.A. 799; Lake Ontario Steel Co. Ltd.

FILE NO. AA85-06-001

EMPLOYER: INCO LTD., Manitoba Division

UNION: United Steelworkers of America, Local 6166

ARBITRATOR: G. Campbell MacLean Q.C.

APPEARANCES: Milton Christianson
Al Plaskett and others for the Union

ISSUE: (1) Application of Seniority: Promotion, Demotion, Transfer 6:2100
(2) Skill and Ability Requirement 6:3000

DATE DECISION RENDERED: June 4th, 1985

EXPEDITED ARBITRATION Yes /x/ No /__/

CIRCUMSTANCES:
The department in which the grievor was working was re-organized resulting in the loss of 3 positions including the grievor's. Subsequently she was transferred to another department. When it was ascertained that employees with less seniority than the grievor had not been transferred, a grievance alleging an improper transfer was initiated. (Articles 15:01 and 15:04 of the Collective Agreement). The Company argued that the grievor was unable to fill the normal requirements of any of the jobs available within the department to which her seniority allowed her access and so was subject to a transfer dictated by the requirements and efficiency of operations (Article 15:02 of the Collective Agreement).

AWARD:
The grievance fails. Evidence presented at the hearing indicated that the grievor did not have the necessary qualifications to fill any of the positions to which she would be entitled by her seniority. Since she did not have the qualifications, the arbitrator ruled that the company under Sec. 15:02 of the agreement had the right to transfer the grievor.

AUTHORITIES: Canadian Labour Arbitrtation p 311.

FILE NO. AA85-06-002

EMPLOYER: Flyer Industries Limited

UNION: Canadian Association of Industrial, Mechanical and Allied Workers, Local No. 3

ARBITRATOR: Jack M. Chapman, Q.C.

APPEARANCES: Edward Tawkin and Maureen MacDonald for the Employer
S. G. Soronow for the Union

ISSUE: (1) Discipline: Warning, Suspension (under 30 days) Insubordination 7:3600
(2) Health and Safety 7:3621
(3) Scope of Review 7:4100

DATE DECISION RENDERED: June 5th, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
The grievor was given a written reprimand and a 2 day suspension for refusing a direct order to help his supervisor move buses from a paint shop. The grievor maintained that the paint shop had been left in such a mess as to create dangerous working conditions. He felt he had a right to refuse work he considered dangerous. The Company contended that the grievor had not brought his concerns about the safety of the work environment to management's attention until after he received his suspension notification. At the time of the incident the grievor was alleged to have refused the work simply because he felt it was not in his job description.

AWARD:
The Arbitrator concluded that while the grievor may have had some real concerns about the safety of the work environment he did not express them in the appropriate way to the appropriate authority at the appropriate time. It appeared to the arbitrator that at the time of the incident the grievor had refused the work because he felt it was not in his job description. Some disciplinary action was, therefore, warranted. While the arbitrator felt that the penalty imposed on the grievor was too harsh, the disciplinary actions of the company were allowed to stand. The grievance was dismissed.

AUTHORITIES: Canadian Labour Arbitration 434-445

FILE NO. AA85-06-003

EMPLOYER: Bonar Packaging Ltd.,

UNION: Canadian Paper Workers Local 830

BOARD: Jack M. Chapman, Q.C.
Joseph Gibbon, Nominee of the Employer
Howard Matthews, Nominee of the Union

APPEARANCES: David Proctor, for the Employer
M. Myers for the Union

ISSUE: (1) Discipline: Discharge: Notification of Absence 7:3110
(2) Holiday Pay 8:3140
(3) Scope of Review 7:4100
(4) Rehabilitative Potential 7:4422
(5) Qualifying for Holiday Pay 8:3110

DATE DECISION RENDERED: June 6th, 1985

EXPEDITED ARBITRATION Yes / / No /X/

CIRCUMSTANCES:
An employee returned from her vacation in Florida one week late, allegedly due to car trouble. She did not inform her employer of her predicament. Upon her return to work she was dismissed from employment for allegedly failing to report to work without a bona fide reason. A grievance asserting unjust dismissal was initiated. The grievor further contended that she had not received holiday pay for 5 days designated in the collective agreement as holidays. With respect to the issue of holiday pay, the company argued that the grievor did not work the days immediately preceding or following the holidays as prescribed in Section 12(a)(i) of the collective agreement. She was not, therefore, entitled to holiday pay for those days.

AWARD:
The grievance succeeds in part. The Board concluded that since the grievor did not inform her employer of her situation as she should have, some disciplinary action was warranted. Because of her spotless employment record, however, discharge was considered too harsh a penalty. The Board ordered the reinstatement of the grievor and the imposition of a 5 month suspension.

With respect to the issue of holiday pay, the Board ruled that Section 12(a)(i) could not apply to employees who are on vacation or otherwise have permission to be absent. The Company was ordered to compensate the grievor for those 5 days.

DISSENT:

Mr. Joseph Gibson, Nominee of the Employer
Mr. Howard Matthews, Nominee of the Union.

AUTHORITIES: Canadian Labour Arbitration; Collective Agreement Arbitration in Canada.

FILE NO. AA85-06-004

EMPLOYER: Lakeshore District Health System

UNION: Canadian Union of Public Employees, Local 2358

BOARD: Martin H. Freedman, Q.C. Chairperson
Murdoch Mackay, Q.C.
George Smith

APPEARANCES: Sidney Green for the Employer
Rob Tonn for the Union

ISSUE: (1) Object of Construction Intention of the Parties 4:2100
(2) Severance Pay 8:3800

DATE DECISION RENDERED: June 7th, 1985

EXPEDITED ARBITRATION Yes /___/ No /_X_/

CIRCUMSTANCES:
When the Employer decided to contract out the work of the dietary, housekeeping and laundry departments, all the employees in those departments were terminated. The Employer subsequently arranged for the firm he had contracted with to hire the displaced employees. The employees, however, lost all of their accumulated seniority and the like.

The Union grieved that under Article 3.02 of the Collective Agreement, if work is contracted out resulting in the displacement of workers, the Employer must either find the displaced employees suitable alternative employment or pay them severence pay. "Suitable alternative employment" was defined by the Union to mean the type which will preserve the existing employment relationship and protect among other things, the seniority rights of employees. Since the Employer had failed to find "suitable alternative employment" for the displaced employees, he owed them severance pay. The Employer disagreed.

AWARD:
The Board concluded that the phrase "suitable alternative employment" as used in the collective agreement implied a continuity of the employment relationship with the Employer under similar terms and conditions of employment. Since the alternative employment offered to the displaced workers did not meet either of these conditions, the Employer did not satisfy his obligation to find suitable alternative employment for the employees. He, therefore, owed them severance pay (compensation for the loss of employment status and the various rights flowing therefrom, especially seniority rights). The grievance succeeds.

DISSENT: Murdoch Mackay, Nominee of the Employer

AUTHORITIES: The Canadian Union of Public Employees, Local 1912 and Betel Home Foundation (Gimli) 1984 unreported; Re: Telegram Publishing Co. Ltd. and Marc Zwelling and Gottlob Essig (1972) 1 L.A.C. (2d) 1 at page 19; Re Western National Drug Services, Division of National Drug and Chemical Company of Canada Ltd. and Retail, Wholesale and Department Store Union, Local 580 (1978) 20 L.A.C. (2nd) 202 at 208 and 209.

FILE NO. AA85-06-005

EMPLOYER: Province of Manitoba

UNION: Manitoba Government Employees Association

ARBITRATOR: S. Glen Sigurdson

APPEARANCES: Mr. Cann and Mr. Cram for the Employer
Brian Havelock for the Union

ISSUE: (1) Discharge: Suspension (under 30 days): Refusal to Follow Instructions 7:3610
(2) Reasonableness of Penalty 7:4300

DATE DECISION RENDERED: June 12th, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
The grievor, an Inspector at a Weigh Scale was suspended for 3 days without pay for unacceptable conduct at the workplace. He was alleged to have been insubordinate to one of his supervisors and to have been absent from work without proper notice.

AWARD:
Evidence presented at the hearing indicated that when confronted by a direct order from his supervisor, the grievor did become hostile and agressive towards the supervisor. He did not, however, fail to give proper notice before being absent from work as alleged by the Employer. The arbitrator concluded that while the Company was entitled to impose some disciplinary penalty, in light of the circumstances a 3 day suspension was excessive. The 3 day suspension was reduced to one day.

FILE NO. AA85-06-006

EMPLOYER: City of Winnipeg

UNION: Canadian Union of Public Employees, Local 500

BOARD: Jack M. Chapman, Q.C., Chairperson
Harold Piercy, Nominee of the Employer
Tom Ulrich, Nominee of the Union

APPEARANCES: Marvin Samphir for the Employer
Mel Myers for the Union

ISSUE: (1) Discharge: Criminal Convictions 7:3422
(2) Scope of Review 7:4100
(3) Mitigating Factors 7:4400

DATE DECISION RENDERED: June 13th, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
The grievor, an Instructor Guard III for the Recreation Department of the City of Winnipeg was fired after being convicted in a criminal court of conspiracy to traffic narcotics (cocaine). A grievance alleging unjust dismissal was initiated.

The City argued that the grievor had held a position of considerable responsibility within the department and had had considerable contact with the public including children. Her position required her to be something of a role model both for her subordinates and for the public. Her conviction for a very serious crime seriously undermined her credibility, ability and effectiveness in this position, therefore, could not be kept on the job. The City further contended that if the grievor were kept on, the general reputation of the department and its employees would be negatively affected.

AWARD:
From an examination of the evidence presented at the hearing, the Board concluded that the grievor's conduct had harmed the City's reputation. The City was, therefore, entitled to impose some disciplinary penalty. The dismissal was considered too harsh a penalty to impose, since the grievor had an untarnished employment record. The Board ordered the City to reinstate the grievor to a reasonably responsible position, one, however, that required less contact with the public.

DISSENT: Mr. Tom Ulrich, Nominee of the Union
Mr. Harold Piercy, Nominee of the Employer

AUTHORITIES: Many authorities were submitted by Counsel during the arbitration.

FILE NO. AA85-06-007

EMPLOYER: Inco Ltd.

UNION: United Steelworkers of America, Local 6166

ARBITRATOR: G. Campbell MacLean

APPEARANCES: Milton Christianson and others for the Employer
Blake McGrath and others for the Union

ISSUE:
(1) Application of Seniority 6:2000
(2) Overtime 8:2100
(3) Object of Construction: Intention of the Parties 4:2100
(4) Aids to the Interpretation of the Collective Agreement 4:2200

DATE DECISION RENDERED: June 19th, 1985

EXPEDITED ARBITRATION Yes /x/ No /__/

CIRCUMSTANCES:
The grievor alleged that she was denied the opportunity to work overtime in the converter/anode casting section of the Smelter Department in violation of Article 7:03 of the Collective Agreement (distribution of overtime).

The Union asserted that the grievor had been working as an anode moldman in the anode casting working group on the day the overtime opportunity arose. She should, therefore, have been given the opportunity to work.

The Employer argued that since the grievor was not a regular member of the converter/anode casting work group she would not be considered for overtime work within that group.

AWARD:
The Arbitrator concluded that the Company's interpretation of Article 7:03 was reasonable. If the grievor had been offered the opportunity to work overtime, it would have been denied to other, more senior employees. The grievance was dismissed.

FILE NO. AA85-06-008

EMPLOYER: Hanover School Division No. 15

UNION: Canadian Union of Public Employees, Local 730

ARBITRATOR: Jack M. Chapman, Q.C.

APPEARANCES: R. A. Simpson for the Employer
Robert Fifik for the Union

ISSUE: (1) Discipline: Suspension (under 5 days): Careless Work 7:3520
(2) Scope of Review 7:4100
(3) Reasonableness of Penalty 7:4300
(4) Mitigating Factors 7:4400

DATE DECISION RENDERED: June 20th, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
The grievor, a school bus driver, was suspended without pay for 5 days for allegedly operating his bus in a reckless manner; driving carelessly and in excess of the speed limit. The grievor denied any wrongdoing.

AWARD:
The Arbitrator, after an examination of the evidence presented at the hearing concluded that the grievor had operated his bus inconsistent with safe driving practices. Since the safe transport of students was of paramount importance, the Employer was entitled to impose some disciplinary penalty. Because of the grievor's exemplary driving record, however, a 5 day suspension was considered too severe a penalty to impose. The suspension was reduced from 5 days to 3 days.

AUTHORITIES: Dauphin Ochre School Area No. 1 and Canadian Union of Public Employees, Local Union No. 857; Intermountain School Division #36 and the Canadian Union of Public Employees, Local 1685; The River East School Division No. 9 and Canadian Union of Public Employees Local 796; Portage la Prairie School Division No. 24 and Canadian Union of Public Employees, Local 2085.

FILE NO. AA85-06-009

EMPLOYER: Westfair Foods Ltd.,

UNION: Manitoba Food and Commercial Workers, Local 832

ARBITRATOR: Professor W. N. Fox-Decent

APPEARANCES: Grant Mitchell for the Employer
David James for the Union

ISSUE: (1) Policy Grievance 2:3124
(2) Assignment of Bargaining Unit Work to Non Unit Employees 5:1400

DATE DECISION RENDERED: June 21st, 1985

EXPEDITED ARBITRATION Yes /x/ No /__/

CIRCUMSTANCES:
This was a policy grievance initiated by the Union alleging the misinterpretation/misapplication of the provisions in the collective agreement relating to bargaining unit work and who may properly do it. The Union alleged that the Assistant Division Produce Manager who was excluded from the bargaining unit performed work (culling, handling, rotating produce) normally performed by a member of the bargaining unit. As a consequence, a part time staff member was denied the opportunity to be called in.

The Employer argued that it was necessary and expected that the Produce Manager would handle produce. He would handle the produce in the process of demonstrating and teaching and on occasion assisting the local store staff with the efficient and effective operation of the department. The Employer further contended that on the day in question, even if the A.D.P.M. had not been in the store, no part time staff member would have been called in.

AWARD:
The Arbitrator concluded that the performance of some bargaining unit work was necessary in the performance of the A.D.P.M's job. The Board further concluded that the work performed by the A.D.P.M. on the day in question was minimal and the company would not have needed an extra staff member to perform it. The grievance was, therefore, dismissed.

AUTHORITIES: Re Becker Milk Co. Ltd., and Teamsters Local Union No. 647, Aug. 7, 1980 unreported (Burkett).

FILE NO. AA85-06-010

EMPLOYER: Sherritt Gordon Mines Limited

UNION: United Steelworkers of America, Local 8144

ARBITRATOR: Jack M. Chapman. Q.C.

APPEARANCES: A. R. Weir for the Employer
Rob Hilliard on behalf of the Union

ISSUE: (1) Overtime 5:3200
(2) Application of Seniority 6:2000
(3) Remedies 5:3240

DATE DECISION RENDERED: June 26th, 1985

EXPEDITED ARBITRATION Yes /X/ No /___/

CIRCUMSTANCES:
The grievor alleged that he was denied the opportunity to work overtime during the Christmas vacation shutdown at the mine while less senior employees from other departments were not; a violation of articles 9, 14.3 of the Collective Agreement.

The Employer argued that since the grievor did not specifically request to be scheduled for overtime, they assumed he did not really want to work.

The union argued that while the grievor did not specifically ask to work the overtime during the Christmas shutdown, he had on several occasions approached his supervisor to indicate his willingness to work extra time as he was experiencing financial difficulties. The Employer should, therefore, have concluded that the grievor would have accepted the opportunity to work the overtime scheduled during the Christmas shutdown.

AWARD:
The Arbitrator ruled that despite the Employer's reservations about the grievor's willingness to work overtime, he should have (according to the collective agreement) been provided with the opportunity to work. The Arbitrator ordered the Employer to compensate the grievor for the overtime work he would have performed.

FILE NO. AA85-07-001

EMPLOYER: Canadian Rogers Western (1971) Ltd.,

UNION: Canadian Association of Industrial, Mechanical Allied Workers, Local 1

BOARD: Jack M. Chapman, Q.C., Chairperson
Peter Kremer, Barrister, Nominee for the Employer
Professor Mark Gabbert, Nominee for the Union

APPEARANCES: William Gardner for the Employer
David Gisser and S. Soronow for the Union

ISSUE: (1) Changes in Job Function 5:2410
(2) Classification 3:2414
(3) Object of Construction: Intention of the Parties 4:2100

DATE DECISION RENDERED: July 11th, 1985

EXPEDITED ARBITRATION Yes /___/ No /X/

CIRCUMSTANCES:
The grievor, who was classified as a Shop Helper, alleged that he performed the work of a Fabricator and Assemblyman Class 3, for 4 days. The work he performed as an F.A. Class 3, carried a higher rate of pay than his normal classification. The Union and the Grievor sought a declaration that the grievor was entitled to be paid for the higher classification of work performed on those 4 days (Section 21:03 of the Collective Agreement).

The Employer contended that the grievor had not performed the work of a Fabricator Assemblyman Class 3 for at least 3 days (24 hours in total) as required by the agreement. He was, therefore, not entitled to the higher rate of pay. The Employer further argued that the grievor had performed only 1 operation listed on the job description for the F.A. Class 3. It was a simple operation performed by many workers in various job classifications in the course of their work.

AWARD:
The Board concluded that Section 21.03 did not contemplate that the work performed must be of such a continuous nature that by adding up all the hours one would find that an employee would work all the hours in a 'day' at one particular job. The wording of the agreement specifically contemplated that an employee would be paid for 'all hours' worked in such a classification. The Board further concluded, however, that the grievor had not been performing the primary and essential function of a F.A. Class 3 and he was not entitled to the higher rate of pay. The grievance was dismissed.

AUTHORITIES: Canadian Labour Arbitration; Re Canada Valve Ltd. and International Molders' and Allied Workers Union, 16 L.A.C. 2(d) 258; Re Sudbury Mine Mill and Smelter Workers' Union and Falconbridge Nickel Mines Ltd., 20 L.A.C. 45; United Steelworkers Local 6571 and Lake Ontario Steel Co. Ltd., 18 L.A.C. 214; Re Georgian College of Applied Arts and Technology and Ontario Public Services Employees' Assoc. and Nova Scotia Civil Service Commission 14 L.A.C. (2d) 69; Re: Douglas Aircraft Co. of Canada Ltd. and United Automobile Workers Local 1967, 3 L.A.C., (2d) 263; Re Franklin Manufacturing Co. Canada Ltd. and International Association of Machinists, Lodge 1246 4 L.A.C. (2d) 201.

DISSENT: Professor Mark Gabbert, Nonimee of the Union.

FILE NO. AA85-07-002

EMPLOYER: Canadian Rogers Western (1971) Ltd.

UNION: Canadian Association Of Industrial, Mechanical Allied Workers, Local 1

BOARD: Jack M. Chapman, Q.C., Chairperson
Peter Kremer, Nominee of the Employer
Professor Jim Silver, Nominee of the Union

APPEARANCES: William Gardner for the Employer
Sidney Soronow for the Union

ISSUE: (1) Changes in Job Function 5:2410
(2) Premium Rates and Bonuses 8:2000
(3) Criteria: Equal Work or Equal Skill 5:2420
(4) Standard of Proof 5:240

DATE DECISION RENDERED: July 11, 1985

EXPEDITED ARBITRATION Yes / / No /X/

CIRCUMSTANCES:
The Grievor alleged that the Employer failed to pay him the pay rate of CNC Press Punch Operator Class I while he was performing the work of that classification. He further alleged that the Employer failed to pay him a Charge Hand premium as required by the Collective Agreement. He requested relief be granted from Dec. 14, 1981.

The Employer contended that the grievor was not performing the work of a CNC Operator Class I. He was performing work which required a lesser degree of skill and knowledge. With respect to the issue of the Charge Hand premium, the Employer argued that according to the Collective Agreement, a Charge Hand could only be one who has a classification of Operator Class I in a given group and who takes charge of all workers and machines within that group. Since he was not an Operator Class I, he could not have been a Charge Hand.

AWARD:
The Board ruled that it would only consider the matters in dispute as and from Dec. 13, 1983 since it did not feel it could deal with any grievance arising from a past agreement.

The grievance succeeds in part. Evidence presented at the hearing indicated that as of Dec. 13, 1983, the grievor was performing the work of a CNC Press Punch Operator Class I. He was, therefore, entitled to receive the monetary difference between the rate he earned and what the collective agreement provided for the higher classification, for the period from January 1, 1984 to the date of his formal reclassification.

With respect to the issue of the Charge Hand pay premium, the Board ruled that the grievor was not entitled to it until he became an Operator Class 1 (January 1, 1984). The Union and the grievor could not, however, prove that from that date the grievor undertook the supervisory responsibilies which would have entitled him to the Charge Hand pay. This part of the grievance was disallowed.

DISSENT: Professor Jim Silver, Nominee of the Union,

AUTHORITIES: Canadian Labour Arbitration; Collective Agreement Arbitratrion in Canada.

FILE NO. AA85-07-003

EMPLOYER: Westfair Foods Ltd.,

UNION: Manitoba Food and Commercial Workers. Local 832

ARBITRATOR: G. Campbell MacLean

APPEARANCES: Grant Mitchell and others for the Employer
Don Primeau and others for the Union

ISSUE: (1) Policy Grievance 2:3124
(2) Unit Definition in Terms of Employees 5:1120

DATE DECISION RENDERED: July 12th, 1985

EXPEDITED ARBITRATION Yes /X/ No /___/

CIRCUMSTANCES:
This was a policy grievance initiated by the Union alleging the improper exclusion of Pharmacy Technicians from the bargaining unit. The union asserted that the work performed by the formally trained Pharmacy Technicians employed by the company do the same work as service clerks employed by the company to assist pharmacists. They should, therefore, be included in the bargaining unit.

The Employer contended that the work performed by Pharmacy Technicians required more skill and knowledge than that performed by service clerks. The Technician's functions were more like those of an undergraduate pharmacist who is excluded from the bargaining unit.

AWARD:
The Arbitrator concluded that the work performed by the technicians and services clerks was similar. A technician was restricted by law from performing many functions performed by undergraduate pharmacists. The technicians should, therefore, be included in the bargaining unit along with service clerks. The grievance was allowed.

FILE NO. AA 85-07-004

EMPLOYER: Westfair Foods Ltd.,

UNION: Manitoba Food and Commercial Workers Union, Local 832

ARBITRATOR: G. Campbell Maclean, Q.C.

APPEARANCES: Grant Mitchell and others for the Employer
David James, for the Union

ISSUE: (1) Seniority 6:2000;
(2) Object of Construction - Intention of the Parties 4:2100

DATE DECISION RENDERED: July 15, 1985

EXPEDITED ARBITRATION Yes /X/ No /__/

CIRCUMSTANCES:

The Union alleged that employees appointed to the position of Assistant Supervisor are working more hours than allowed by the seniority provisions of the Collective Agreement. The grievance arises out of a dispute concerning the interpretation and application of Section 9(c) of the Collective Agreement which states:

> "The Assistant Department Store Manager shall be:..... when not relieving, receiving hours equal to but not more than the senior employees in the Department...."

The Union contends that an Assistant Supervisor can not be considered to be relieving a Department Manager unless the Department Manager is away for 2 or more consecutive days. The Union further argues that the Assistant Manager cannot receive more hours than employees in the department senior to him. Management contends that an Assistant Supervisor may relieve the Department Manager for any number of short periods of time throughout the day. Further, the Company argues that "Senior Employees" was meant to read "Senior Employee" and that the intention of Section 9(c) was to allow Assistant Managers to work as many hours, but not more than the most senior employee in the Department.

AWARD:

The grievance fails. The Arbitrator concluded that "relieving" in Section 9(c) may be applied to those hours the Assistant Manager works when the Department Manager is unavailable to work. The Arbitrator further concluded that "Senior Employee" refers to the 2 most senior employees in the Department and not to all the employees in the Department senior to the Assistant Manager. These interpretations applied to the evidence presented at the hearing suggested that the Assistant Managers were scheduled to work when the Department Managers were absent and the hours worked when not relieving seemed to be close to those dictated by their seniority.

FILE NO. AA 85-07-005

EMPLOYER: Misericordia General Hospital

UNION: Manitoba Paramedical Association

BOARD: David E. Bowman, Q.C. Chairman.
(Board members not listed)

APPEARANCES: D. H. Kells for the Employer
Lisa Castle for the Association

ISSUE: (1) Organization of Work: Vacancies 5:2510
(2) Job Posting 5:2520

DATE DECISION
RENDERED: July 23rd, 1985.

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
The union grieved that a Technologist III position which had been filled on a full time basis for many years should not have been filled on a part time basis during the incumbent's Maternity Leave. Upon her return, the incumbent found that the work to be performed which included the training of students had fallen well behind schedule. The Union contended that management should have discussed the posting of a part time vacancy at greater length than it did and that under Article 7.08 notice should have been given to the Association concerning "a significant change of the normal work week." The company contended that the responsible authority had employed reasonable criteria in determining what vacancy should be posted. Further, under Article 4.02 of the Collective Agreement, the hospital had actually consulted the Association to a greater extent than was required.

AWARD:
While the 3 day/week position did not discharge the necessary duties in an entirely satisfactory manner, the Board ruled that hindsight cannot be invoked if the original decision was reasonable. Given the consultation between the parties and the arrangements made by the incumbent prior to her departure, the Board ruled that the decision to post a part-time vacancy was reasonable. The grievance fails.

AUTHORITIES: Horton Steel Ltd., and United Steelworkers Local 3598 (Rayner, April 1973) 3 LAC (2nd) 54 at 56; Polymer Corp. Ltd., and Oil Chemical and Automic Workers Local 9-14 (Rayner, April 1974) 5 LAC (2nd) 344 at 346; Air Canada and Canadian Air Line Employees Association (Brandt, March 1975) 8 LAC (2nd) 239 at 246; Municipality of Metropolitan Toronto and Canadian Union of Public Employees Local 43 (Adams, November, 1975) 10 LAC (2nd) 247 at 253; Parking Authority of Toronto and Canadian Union of Public Employees Local 43 (Adell, January 1974) 5 LAC 150 at 156; Brown and Beatty, Canadian Labour Arbitration, 2nd edition; Palmer.

FILE NO. AA 85-07-006

EMPLOYER: Carling O'Keefe Breweries of Canada Ltd.,

UNION: Brewery and Soft Drink Workers, Local Union No. 330

BOARD: Jack M. Chapman, Q.C., CHAIRPERSON
David Proctor, Nominee of the Employer
Robert Malazdrewich, Nominee of the Union

APPEARANCES: W. Hamilton for the Employer
M. Myers Q.C. for the Union

ISSUE: (1) Discharge of Probationary Employee 7:5020; Non
(2) Non Disciplinary Termination of Employment. Lay-off, Recall of Persons on Lay-Off 6:2352

DATE DECISION RENDERED: July 23, 1985

EXPEDITED ARBITRATION Yes / / No /X/

CIRCUMSTANCES:
The union alleges that the grievor was discharged from his employment without just cause. The Company argued that the employee had not been discharged but had been laid off. The Company further asserted that under Sections 2.01 and 5.10 of the Collective Agreement dealing with probationary employees, the grievor had not qualified for automatic recall rights, therefore, the Company had been under no obligation to recall him as work came up.

AWARD:
The grievance fails. The Board found that while there had been a severance of the employment relationship, it did not constitute a disciplinary discharge. The Collective Agreement clearly states that the company was within its rights to refuse to recall employees who had been employed with the company for less than 60 days.

DISSENT: Mr. Robert Malazdrewich, nominee for the union.

AUTHORITIES: Carling O'Keefe Breweries of Canada Ltd., and Brewery and Soft Drink Workers, Local Union No. 330 - Kolley Grievance - unreported; RE Porcupine Area Ambulance Service and Canadian Union of Public Employees, Local 1484, 7 L.A.C. (2d) 182; Re Central Canada Potash Co. Ltd., and United Steelworkers, Local 7656, 10 L.A.C. (2d) 29; RE Board of Education for the Borough of Scarborough and Ontario Secondary School Teachers' Federation, District 16, 26 L.A.C. (2d) 160; Re Pacific Western Airlines Ltd., and Canadian Air Line Flight Attendants Association, 30 L.A.C. (2d) 68; Re Shasta Beverages Ltd., and Miscellaneous Workers, Wholesale & Rental Delivery Drivers & Helpers' Union, Local 351, 9 L.A.C. (2d) 116; Brown & Beatty, Canadian Labour Arbitration, 2nd edition; RE General Motors of Canada Ltd. and U.A.W., Local 119 (1972), 1 L.A.C. (2d) 401; RE Consumers' Gas Company and Int'l Chemical Workers, Local 161, (1973) 2 LA.C. (2d) 366.

FILE NO. AA 85-07-007

EMPLOYER: The City of Winnipeg

UNION: Canadian Union of Public Employees, Local 500

ARBITRATOR: Martin H., Freedman, Q.C.

APPEARANCES: Marvin Samphir, for the Employer
Robb Tonn, for the Union

ISSUE: Senior Employee with required ability

DATE DECISION RENDERED: July 24th, 1985

EXPEDITED ARBITRATION Yes / / No /X/

CIRCUMSTANCES:
An employee with less seniority than the grievor was appointed to the position of Technician I/II. The Union asserts that since the grievor is senior to the employee appointed to the position, and meets the requirements for the position, he should be placed in the position immediately. The Company argued that the employee appointed to the position of Technician I/II was the employee who had served longest in the same or next grade junior to the position vacant and as such was entitled to the position under Section 12-1(A) of the Collective Agreement. The Union questioned the argument that the position held by the junior employee prior to his appointment as Technician I/II was the next grade junior to the vacant position. The Union also asserted that Section 12-1 of the Collective Agreement did not apply to temporary employees.

AWARD:
The grievance fails. The Board found, upon examination of the Collective Agreement, that for the purposes of Article 12-1(A) there was no distinction between the rights of temporary and permanent employees. It further concluded that the junior employee had in fact occupied a position which was next grade junior to the vacant position and was entitled to the appointment to Technician I/II under Section 12-1(A) if the Collective Agreement provided he met the other conditions referred to.

FILE NO. AA85-07-008

EMPLOYER: Westfair Foods Ltd.,

UNION: Manitoba Food and Commercial Workers, Local 832

ARBITRATOR: Martin H. Freedman, Q.C.

APPEARANCES: Grant Mitchell, for the Employer
Donald Primeau, for the Union

ISSUE: (1) Seniority 6:2000;
(2) Hours of Work 5:3100;
(3) The Scope of Arbitral Review 6:3100;
(4) The Skill and Ability Requirement 6:3000

DATE DECISION RENDERED: July 24th, 1985

EXPEDITED ARBITRATION Yes /x/ No / /

CIRCUMSTANCES:
Two employees grieved that a more junior employee had, for a considerable period of time, been receiving more hours than they in violation of Section 18.13 of the Collective Agreement. The company argued that the junior employee had been appointed to the position of head clerk and as such was required to work more hours. The company further argued that the junior employee had been appointed to the position of head clerk on the basis of her perceived ability to take initiative and make judgements, qualities the company felt were not evident in the grievors.

AWARD:
The grievance failed. Since there was no evidence of discrimination, bad faith or the unreasonable exercise of judgement when the company appointed the junior employee as head clerk, the Board felt it could not interfere with the company's decision to appoint the junior employee as head clerk and to schedule hours of work they feel are necessary to complete the work.

AUTHORITIES: Brown and Beatty: Canadian Labour Arbitration, Pages 298 et seq.

FILE NO. AA85-08-001

EMPLOYER: Government of Manitoba

UNION: Manitoba Government Employees Association

BOARD: K. G. Houston, Q.C. Chairperson
A.F. Kristjanson Q.C. Nominee of the Employer
M. Mackay, Nominee of the Union

APPEARANCES: N/A

ISSUE: Discipline, Discharge: Deviant Behavior 7:3400

DATE DECISION RENDERED: August 8th, 1985

EXPEDITED ARBITRATION Yes / / No /X/

CIRCUMSTANCES:
The grievor was dismissed from employment in November, 1978. He was alleged to have sexually harrassed several of his female workers. The grievor denied any wrongdoing.

AWARD:
Evidence presented at the hearing indicated that the grievor had conducted himself in an inappropriate manner while in the company of his female co-workers. The Employer was, therefore, entitled to impose some disciplinary action. The Counsel for the grievor did not present any compelling evidence of mitigating factors which would justify the substitution of a lesser penalty. The dismissal was upheld.

DISSENT: M. MacKay, Nominee of the Union, submitted minority award.
A.F. Kristjanson Q.C,.

FILE NO. AA85-08-002

EMPLOYER: Burns Meats Ltd., (Brandon, Manitoba)

UNION: United Food and Commercial Workers International Union, Local 111

ARBITRATOR: G. Campbell MacLean, Q.C.,

APPEARANCES: G. D. Parkinson for the Employer
Colin Trigwell for the Union

ISSUE: (1) Premium Rates and Bonuses 8:2000;
(2) Disciplinary Demotion 7:3544;
(3) Non Disciplinary Demotion 7:3546;
(4) The Object of Construction: Intention of the Parties 4:2100

DATE DECISION RENDERED: August 9, 1985

EXPEDITED ARBITRATION Yes /X/ No /__/

CIRCUMSTANCES:
The grievor, considered to be a new employee under the terms of the collective Agreement and as such, subject to wage guidelines for new employees, was assigned to be group leader on or about April 18, 1985 at a rate of pay of $10.01/hr. On May 30th, 1985 he was removed from this position and no one was appointed to replace him. The company had discovered an error in his pay rate and rather than pay him $13.00/hr as required by the Collective Agreement, they removed him as group leader. The union stated that the company had acted in a discriminatory fashion when it removed the grievor from his position arguing that such an action constituted a demotion without just cause. The union also argued that the grievor should be paid the proper rate of pay for the period he functioned as group leader.

AWARD:
The grievance, succeeds in part. The Collective Agreement clearly stipulates that group leaders must be paid .05(¢) more per hour than the highest rated man in the group; (in this case $13.00/hr). The company must pay the grievor the full rate of pay specified in the Collective Agreement for his work as group leader. The grievance fails in part. It is clearly stated in the Collective Agreement that the removal or appointment of a group leader does not constitute a demotion or promotion and the company can at its own discretion undertake to appoint or remove a group leader as long as its action is not arbitrary, discriminatory or otherwise in bad faith. There was no evidence to suggest that the company acted in a discriminatory manner when it removed the grievor from the position of group leader. It appeared to be a cost based decision which the company was within its rights to make under the Collective Agreement.

FILE NO. AA85-08-003

EMPLOYER: Government Of Manitoba

UNION: Manitoba Government Employees' Association.

ARBITRATOR: Glen S. Sigurdson

APPEARANCES: Mr. Cram for the Employer
Brian Havelock for the Union

ISSUE: (1) Suspension (under 30 days) 7:3542;
(2) Reasonableness of Penalty 7:4300

DATE DECISION RENDERED: August 14, 1985

EXPEDITED ARBITRATION Yes / / No /X/

CIRCUMSTANCES:
A day care worker was suspended for 3 days without pay following a report to the Director, Child Care concerning her inadequate record keeping procedures. The Director stated that the day care worker's failure to follow proper program policies and guidelines concerning documentation procedures had placed the status of the day care in jeopardy.

AWARD:
The arbitrator found that in violation of Article 17:03 of the Collective Agreement, the grievor had not been given a copy of the memo submitted to the Director. Neither had she been given an opportunity to respond to the matters addressed in the memo prior to the imposition of discipline. While concerns regarding documentation were well founded according to the arbitrator, a 3 day suspension was considered an inappropriate penalty. The suspension was rescinded and a written reprimand substituted.

FILE NO. AA85-08-004

EMPLOYER: Inter City Manufacturing Limited

UNION: The Canadian Association of Industrial, Mechanical and Allied Workers, Local 3.

BOARD: J. M. Chapman, Q.C. Chairperson
G. D. Parkinson, Nominee of the Company
Professor Paul Stevenson, Nominee of the Union

APPEARANCES: W. Ritchie, Q.C. and D. Kells, for the Employer
Sidney Soronow and David Gisser, for the Union

ISSUE: (1) Discipline ; Discharge; Leave work without Permission, 7:3130;
(2) Company Rules 4:1500;
(3) Limits to the Arbitration of Grievances, 2:300;
(4) The Hearing: Preliminary Matters 3:2000;

DATE DECISION RENDERED: August 15th, 1985

EXPEDITED ARBITRATION Yes [ ] No [x]

CIRCUMSTANCES:
The Union contends that the 3 employees were unjustly discharged from their employment. The Company argued that the 3 employees had left company property prior to the end of their shift without permission. Under the terms of the Collective Agreement, this was defined as an intolerable offence punishable by discharge.

AWARD:
The grievance fails. Evidence presented at the hearing clearly indicated that the three employees had in fact left the plant without permission, an intolerable offence punishable by discharge. The grievors did not appear on their own behalf to present any mitigating or extenuating circumstances to justify their actions.

DISSENT:

Professor Paul Stevenson, nominee of the union. Mr. Stevenson felt there had not been enough evidence presented to establish that the dismissal was for just cause.

FILE NO. AA85-09-001

EMPLOYER: Thompson General Hospital

UNION: Manitoba Food and Commercial Workers, Local 831

BOARD: Professor W. N. Fox-Decent
J. Gibson, Nominee of the Employer
N. Evans, Nominee of the Union

APPEARANCES: David Proctor, for the Employer
D. Primeau, for the Union

ISSUE: (1) Policy Grievance 2:3124
(2) Assignment of Bargaining Unit Work to Non Unit Employees - Contracting Out 5:1300

DATE DECISION RENDERED: September 12th, 1985

EXPEDITED ARBITRATION Yes / / No / /

CIRCUMSTANCES:
This was a policy grievance initiated by the Union. The issue was one of interpretation of the Collective Agreement dealing with bargaining unit work.

The grievance arose when the Employer hired a Licensed Practical Nurse to fill a temporary position in the Physiotherapy Department. The Union argued that the position filled by the L.P.N. had been filled for many years by a Physiotherapy Aide who was a member of the bargaining unit. The L.P.N. had displaced a suitable candidate for the position who belonged to the bargaining unit.

The Hospital argued that an emergency situation arose when one of its two Physiotherapists resigned and the other went on maternity leave. It was necessary to have a better qualified person than a Physiotherapy Aide in the department until such time as 2 full time Physiotherapists could be found.

AWARD:
The Board ruled that in this case the circumstances were such that someone more qualified than an aide was needed to staff the department to maintain a standard of care. The Employer in these circumstances was entitled to fill the position with a candidate from outside the bargaining unit. The Board further concluded, however, that when there is one full time or nearly full time qualified Physiotherapist on staff and another is needed, the Hospital must award the position to an aide who is a member of the bargaining unit.

FILE NO. AA85-09-002

EMPLOYER: University of Manitoba

UNION: University of Manitoba Faculty Association

ARBITRATOR: David E. Bowman, Q.C.

APPEARANCES: William Hamilton, for the Employer
Mel Myers, Q.C. ,for the Union

ISSUE: (1) Final Offer Selection Arbitration;
(2) The Collective Agreement 2:1200

DATE DECISION RENDERED: September 12th, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
An Arbitrator was appointed under Section B7 of the Collective Agreement to settle, using final offer selection, the monetary terms of the agreement which could not be settled in negotiation. The proposals of the Association and the University were as follows:

> Association: A one year contract with a 2% increase on the salary scale, development and travel allowances and stipends.
>
> University: A two year contract involving no increases in the salary scale or allowances under Section 27; the elimination of travel advances; no increase in stipends and a 5% increase under Article 31 all in the first year and in the second year a 3% increase on scale - a $400.00 flat increase in each per diem and travel allowances and a 3% increase in stipends.

AWARD:
On the basis of what he considered to be the most important issue outstanding - salary increase - the Arbitrator ruled that the Association's position was the more reasonable position. After an examination of the University's ability to pay, the consumer price index and comparable settlements, the abritrator felt that a salary increase, albeit a modest one was warranted. The entire proposal of the Association was ordered to be incorporated into the Collective Agreement.

FILE NO. AA85-09-003

EMPLOYER: Charleswood Food Centre Ltd.

UNION: Manitoba Food and Commercial Workers Union, Local 832

ARBITRATOR: G. Campbell MacLean, Q.C.

APPEARANCES: E. Bruce Parker, for the Employer
D. A. Primeau, for the Union

ISSUE:
(1) Demotion 6:2100;
(2) Reduction of Hours 6:2210;
(3) Management Rights 4:2310;
(4) The Requirement of Bona Fides 5:2300;
(5) Remedial Authority of the Arbitrator 6:4000.

DATE DECISION RENDERED: September 13, 1985.

EXPEDITED ARBITRATION Yes /x/ No /__/

CIRCUMSTANCES:
An employee with 10 years of seniority was laid off. Her employer had informed her that the company was experiencing a decline in business and no longer had a need for a full time head cashier. She was subsequently rehired as a part time cashier. The union argued that the actions of the company constituted a demotion of the employee and violated both the Collective Agreement and sections 69.2(1) and 69.2(2) of the Manitoba Labour Relations Act.

AWARD:
The grievance succeeds in part. Upon examination of the Collective Agreement the Arbitrator concluded that under Section 10.01 (the management rights clause) the employer effectively had the right to respond to a decline in business by eliminating unnecessary positions, in this case the position of head cashier. The abritrator ruled, however, that the grievor, because of her seniority, should have been retained as a full time cashier. Less senior employees would more rightly have been affected by the decline in business and the consequent reduction in staff and hours. The company was ordered to ensure that the grievor regain and maintain her full time status.

FILE NO. AA 85-09-004

EMPLOYER: City of Winnipeg

UNION: Canadian Union of Public Employees, Local 500

BOARD: Martin H. Freedman, Q.C. Chairperson
Harold Piercy
Tom Ulrich

APPEARANCES: Marvin Samphir, for the Employer
Mel Myers, Q.C., for the Union

ISSUE: (1) Discipline, discharge: Leave Work without Permission 7:3130;
(2) Dishonesty 7:3300;
(3) Reasonableness of Penalty 7:4300;
(4) Doctrine of Culminating Incident; 7:4310.

DATE DECISION RENDERED: Sept. 20, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
An employee who had had a history of misconduct, was dismissed from employment after being absent from work without permission and for submitting a falsified time sheet. The union submitted the case to arbitration seeking the substitution of a lesser penalty.

AWARD:
The Board upheld the City's decision to dismiss the employee. The union did not submit any evidence of mitigating or extenuating circumstances to justify the grievor's wrongful act. The misconduct in the summer of 1984 by itself was sufficient to justify discharge in some cases. In light of the employee's history of misconduct, The Board felt it had no alternative but to uphold the City's decision.

AUTHORITIES: Re Livingston Industries Ltd. and International Woodworkers of America 6 LAC (3d) 4; Re Treasury Board (Department of Supply and Services) and Deschenes and Pharand 20 LAC (2d) 388; Re Forrester and Treasury Board (Post Office Department) 2LAC 3d) 182.

FILE NO. AA85-09-005

EMPLOYER: Manitoba Telephone System.

UNION: Communication Workers of Canada

BOARD: J. M. Chapman, Q.C.,
G. D. Parkinson, Nominee of the Employer
W. Kennedy, Nominee of the Union

APPEARANCES: E. W. Olson, Q.C., for the Employer
Mel Myers, Q.C., for the Union

ISSUE: (1) Organization and Direction of the Workplace 5:0000;
(2) Procedural Requirements 5:2500;
(3) Management's Duty to Act Fairly 4:2320

DATE DECISION RENDERED: Sept. 25th, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
The grievors alleged that they had been unjustly and unfairly reclassified to part time operators from term full time operators. Counsel for the union submitted evidence which suggested that the company had expected an increase in the workload for the period and argued that the reclassification should not have occurred. The company argued that the actual volume of work during the period fell well below its forecasted estimate and under those conditions, was within its rights under Section 3:01 of the Collective Agreement to terminate or reclassify term employees. Further, the grievors had signed a term employment acknowledgement form indicating their understanding of the company's policy concerning the termination of term work.

AWARD:
The grievance fails. The Board found that while management may have made errors in its workload forecast, it did not do so in a biased or discriminatory manner. Nor was there any evidence to suggest that management exercised its right to terminate or reclassify the grievors in a biased, discriminatory or unfair manner. Particularly significant in the case were the term employment acknowledgement forms signed by the grievors clearly indicating their understanding that they could be reclassified to part time operators at any time if there was a reduction in the volume of work.

DISSENT: Mr. W. Kennedy, nominee for the union.

FILE NO. AA85-09-006

EMPLOYER: CKY-TV (A Division of Moffat Communications Ltd.)

UNION: National Association of Broadcast Employees and Technicians - CLC

ARBITRATOR: Jack M. Chapman, Q.C. Chairman

APPEARANCES: David Proctor, for the Employer
Denis J. Power, for the Union

ISSUE: (1) Compensation: Overtime 8:2100
(2) Pyramiding: 8:2140

DATE DECISION RENDERED: September 26th, 1986

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
The grievor was scheduled to work 10:00 a.m. to 6:00 p.m. Upon completion of her regular shift, she was asked to work an additional 6 hours from 6:00 p.m. to midnight. During her overtime shift she failed to take the 1/2 hour paid meal break allowed by the Collective Agreement and was not paid for an extra 1/2 hour of work. The union contended that the grievor should have been credited with and compensated for the extra 1/2 hour. The Company argued that the Collective Agreement provided that if a meal break was not taken the employee was entitled to a meal displacement allowance (which she received). To pay the employee a meal displacement penalty as well as a 1/2 hour's pay for a missed meal break would result in a pyramiding of benefits.

AWARD:
The grievance fails. The Board ruled that compensation for the missed meal break was provided in the form of a meal displacement penalty. Crediting time for a missed meal period in addition to the meal displacement penalty would be a pyramiding of benefits. In the absence of any wording agreeing that multiple benefits be paid, they should not be allowed to do so.

AUTHORITIES: Brown and Beatty, Canadian Labour Arbitration; Re Province of Ontario and Ontario Provincial Police Association 3 LAC (2d) 64; Re Canadian Union of Public Employees, Local 1028 and Halifax County Municipal Mental Hospital 23 LAC, 383.

FILE NO. AA85-10-001

EMPLOYER: Interprovincial Co-Operative Ltd.,

UNION: Energy and Chemical Workers Union, Local 681

ARBITRATOR: Martin H. Freedman, Q.C.

APPEARANCES: G. D. Mearns for the Employer
Russ Pratts for the Union

ISSUE:
(1) Preliminary Objections 2:3100
(2) Compliance with the Grievance Procedure 2:3120
(3) Time Limits 2:3128
(4) Relief against non-compliance with the grievance procedure 2:3140

DATE DECISION RENDERED: October 9th, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
An employee was dismissed from employment. Before the case for unjust dismissal proceeded to arbitration, the Union filed a preliminary objection arguing that the discharge was a nullity. The Employer had failed to notify the employee and the Union of the dismissal in a timely manner.

The Employer contended that it had misunderstood the terms of the Collective Agreement dealing with grievance procedures. Further, the delay in compliance with the agreement was an absolute minimum period of delay and there was no evidence of prejudice to the grievor or to the Union as a result of the delay.

AWARD:
The Preliminary objection was overruled. The Board granted the Employer relief from the time limits in the Collective Agreement.

AUTHORITIES: RE: Inmont Canada Ltd., and the Energy and Chemical Workers Union, Local 25 (1981) 30 L.A.C. (2d) 436; Re: Eastern Provincial Airways (1963) Ltd. and C.A.L.E.A. (1980) 26 L.A.C. (2d) 150; Re: CIP Containers Ltd., and International Chemical Workers, Local 229 (1973) 2 L.A.C. (2d) 308; The Labour Relations Act, Section 109 (2)(e); Canadian Labour Arbitration p 48.

FILE NO. AA85-10-002

EMPLOYER: City of Winnipeg

UNION: Canadian Union of Public Employees, Local 500

BOARD: Jack M. Chapman, Q.C. Chairperson
G. Parkinson, Nominee of the Employer
H. Mitic, Nominee of the Union

APPEARANCES: M. Samphir for the Employer
M. Myers for the Union

ISSUE: Discharge: Probationary Employees 7:5000

DATE DECISION RENDERED: October 15th, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
The grievor, a probationary employee, was dismissed from employment as a labourer on an asphalt laying crew for failing to perform the duties associated with his position in an acceptable manner.

The Company contended that the grievor was always slow and appeared to be lost as to what his job was. The grievor's foreman had discussed his poor work performance with him on several occasions. When it failed to improve the decision was made to let him go.

The Union argued that the discharge was a disciplinary discharge, not a discharge based on an assessment of the grievor's ability to perform the job. Since the grievor had done nothing which warranted the imposition of a disciplinary penalty, he could not be discharged.

AWARD:
The Board concluded that the discharge was not based on disciplinary matters but on the decision of the foreman that the grievor was not suitable for the position. According to the provisions of the collective agreement dealing with probationary employees the Employer was entitled to assess the candidate's suitability for the position and to discharge him if that assessment was negative. The grievance was dismissed.

DISSENT: Mr. H. Mitic, Nominee of the Union

AUTHORITIES: Canadian Labour Arbitration p. 499, 508-509

FILE NO. AA85-10-003

EMPLOYER: City of Winnipeg

UNION: United Food and Commercial Workers, Local 111

BOARD: Jack M. Chapman. Q.C. Chairperson
Peter Kremer, Nominee of the Employer
Howard Matthews, Nominee of the Union

APPEARANCES: W. Gardner for the Employer
M. Myers for the Union

ISSUE:
(1) Discipline: Discharge: Insubordination 7:3600
(2) Doctrine of Culminating Incident 7:4310
(3) The Final Incident 7:4312
(4) Company Rules 4:1500
(5) Management's Duty to Act Fairly 4:2320

DATE DECISION RENDERED: October 16th, 1985

EXPEDITED ARBITRATION Yes / / No /X/

CIRCUMSTANCES:
The Grievor was suspended pending discharge for refusing a request by his superior to sign a production record which showed that on one day he worked only 2 hours. The grievor was subsequently discharged.

The Employer contended that it was a company policy and rule to sign production records when asked. The grievor's refusal to comply with his supervisor's request constituted insubordination and in light of his dismal disciplinary record, the Company's only alternative was to discharge the grievor.

The Union argued that another company rule established by the company made it an offence for an employee to sign a false or misleading time sheet/production record. Since the grievor felt he would be signing a false document he had the right to refuse his supervisor's request to sign. There had been no misconduct on the part of the grievor, therefore, the company had no cause to impose any disciplinary penalty on the grievor, let alone discharge him.

AWARD:
After considering the testimony of the Employer acknowledging its rule concerning the submission of false or misleading time sheets, the Board concluded that the grievor was entitled to refuse his supervisor's request to sign a document which he felt was inaccurate. There was, therefore, no cause to impose any disciplinary penalty on the grievor. The Board ordered the Employer to reinstate the grievor.

DISSENT: Mr. Peter Kremer, Nominee of the Employer

AUTHORITIES: Canadian Labour Arbitration p 434-452; RE: British Columbia Railway and Canadian Union of Transportation Employees, Local 6 (1982) 8 L.A.C. (3d) 233; Bestview Holdings Limited and Bestview Services Limited and Christian Labour Association of Canada (Jan 6, 1983); MTO Products Limited and International Union, United Automobile Aerospace and Agricultural Implement Workers of America, Local Union, No. 1524 (1983); RE: Kimberley-Clark of Canada Ltd. and United Paper-makers and Paperworkers, Local 256 (1973) 3 L.A.C., (2d) 278 and others.

FILE NO. AA85-10-004

EMPLOYER: Sharon Home Inc.,

UNION: Manitoba Government Employees Association

BOARD: David E. Bowman, Q.C. Chairperson
(Board members not listed)

APPEARANCES: G. D. Parkinson and J. M. Christianson for the Employer
W. D. Hamilton for the Union

ISSUE: (1) Discipline: Suspension (under 30 days) Deviant Behavior 7:4300
(2) Discipline: Discharge: Deviant Behavior 7:4300
(3) Standard of Proof: Criminal Misconduct 7:2500
(4) Weighing the Evidence 3:5100

DATE DECISION RENDERED: October 28th, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
The grievor, a nurse's aide at a personal care home was suspended and subsequently discharged for allegedly assaulting one of the patients under her care. The grievor denied any wrongdoing and initiated grievances alleging unjust suspension and dismissal.

AWARD:
The grievances were allowed. The Board concluded that the patient who acccused the grievor of assaulting her was not a credible witness. No other evidence was advanced to corroborate her testimony. The Board ordered the immediate reinstatement of the grievor.

AUTHORITIES: Many authorities cited by counsel in this case.

FILE NO. AA85-11-001

EMPLOYER: Manitoba Public Insurance Corporation

UNION: Manitoba Government Employees Association

BOARD: Jack M. Chapman Q.C. Chairperson
Robert Simpson, Nominee of the Employer
Lawrie Cherniack, Nominee of the Union

APPEARANCES: G. D. Parkinson for the Employer
Brian Havelock for the Union

ISSUE: (1) Transfers 6:2100
(2) Object of Construction: Intention of the Parties 4:2100

DATE DECISION RENDERED: November 5th, 1986

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
Two long service employees, employed as Claims Estimators, applied for lateral transfers to other offices when positions became vacant. They were not granted the transfers and newly hired employees were employed to fill the vacant positions.

The Union grieved, arguing that the Employer had violated Article 12.01 and 12.02 of the Collective Agreement which stipulated that: "position vacancies shall be filled with present qualified employees who make application."

The Employer contended that under Sections 3.01 and 12.09 of the Collective Agreement, the lateral transfer of an employee may be granted at the Employer's discretion. If the employees in question were transfered to other offices to serve as claims estimators, vacancies would be created in the offices from which they transferred. Two new employees would still have to be hired.

AWARD:
The Board concluded that if the Union's grievance was allowed, the employees would effectively have the right to work in the location of their choice. The result would be a chain reaction of lateral transfers. Article 12.09 of the agreement was negotiated and agreed to by the parties to prevent this from occuring. The grievance was denied.

DISSENT: Mr. Lawrie Cherniack, Nominee of the Union.

AUTHORITIES: Canadian Labour Arbitration; Re: International Nickel Co. of Canada Ltd. and United Steelworkers Local 6500 (1975) 8 L.A.C. (2d) 34; Felec Services Incorporated and International Brotherhood of Electrical Workers, Local 2085 Jan 3, 1977; the decision of the Manitoba Court of Appeal re: Felec Services.

FILE NO. AA85-11-002

EMPLOYER: Charleswood Food Centre Ltd.

UNION: Manitoba Food and Commercial Workers, Local 832

ARBITRATOR: G. Campbell MacLean, Q.C.

APPEARANCES: E. Bruce Parker for the Company
D. A. Primeau for the Union

ISSUE: Work Hours and Shifts 5:3100

DATE DECISION RENDERED: November 15th, 1985

EXPEDITED ARBITRATION Yes / x / No / /

CIRCUMSTANCES:
In a previous award, the Arbitrator ruled that the grievor be reinstated as a full time cashier at a grocery store. Since that award, the grievor had been scheduled to work 40 hours per week. Those hours, however, had been scheduled over a six day period. The Union alleged that the Employer was breaching articles 16.01, 16.02 and 16.03 of the Collective Agreement dealing with the normal basic work week for regular full time employees.

The Employer argued that a recent reduction in business had made it impossible to schedule the grievor for 40 hours over 5 days.

AWARD:
The grievance succeeds. The Arbitrator ruled that while the Company may be having business difficulties, it could not unilaterally alter the terms of the Collective Agreement to suit its needs. The grievor must be scheduled to work 40 hours over a 5 day period. Any work done on a 6th day would entitle her to be compensated for overtime.

FILE NO. AA85-11-003

EMPLOYER: Inco Limited, (Manitoba Division)

UNION: United Steelworkers of America, Local 6166

ARBITRATOR: Jack M. Chapman, Q.C.

APPEARANCES: M. Christianson for the Employer
Ron Schmidt for the Union

ISSUE: (1) Discipline: Discharge: Insubordination 7:3600
(2) Discipline: Discharge: Health & Safety 7:3621
(3) Doctrine of Culminating Incident 7:4310
(4) The Final Incident 7:4312

DATE DECISION RENDERED: November 22nd, 1985

EXPEDITED ARBITRATION Yes / x / No / /

CIRCUMSTANCES:
The grievor was dismissed from employment for provoking an altercation with a supervisor who was attending an injured man and for failing to wear proper eye safety equipment. The Company outlined that when viewed in isolation, these 2 incidents would not have provided sufficient cause for dismissal. When viewed in relation to his past employment record, however, which contained a great many warnings for absenteeism and misconduct (including a last chance or final warning issued 2 months prior to the discharge) there was just cause for dismissal. The Union alleged that the grievor had been innocent of any wrongdoing in the incidents which precipitated the discharge, therefore, there had been no cause whatsoever to impose any form of discipline on the grievor. The Union further contended that if the Arbitrator ruled that the Company had just cause to impose discipline, discharge was too severe a penalty to impose. Aside from his misconduct and absenteeism, the Company affirmed that the grievor was a good miner. The Union recommended that a suspension be substituted for the discharge.

AWARD:
After the presentation of evidence, the Arbitrator concluded that the grievor was not innocent of any wrongdoing in the events which precipitated the discharge. The Company was, therefore, entitled to impose some disciplinary penalty and to review the grievor's dismal employment record to determine what penalty to impose. Given the grievor's dismal employment record and the many chances the Employer afforded the grievor improve, the Arbitrator ruled that discharge was the appropriate penalty to impose. The grievance was dismissed.

AUTHORITIES: Brown and Beatty Canadian Labour Arbitration p634; Re: United Steelworkers, Local 2308 and Union Drawn Steel Co. Ltd., 1963 14 L.A.C. 2; Re: Retail, Wholesale etc. Workers Local 461, and Canadian Food Products Sales Ltd., (1966) 17 L.A.C. 137; RE: United Steelworkers Local 5629 and Dominion Steel & Coal Corp. Ltd. 1962 12 L.A.C. 336; RE: United Automobile Workers, Local 776 and McCord Corp. (1966) 17 L.A.C. 321; RE: Int'l Woodworkers of America, Local 8-80 and Comox Logging and Railway Co. (1964) 15 L.A.C. 182 and others.

FILE NO. AA85-11-004

EMPLOYER: Associated Beer Distributors Ltd.,

UNION: Brewery and Soft Drink Workers, Local 330

BOARD: Jack M. Chapman, Q.C., Chairperson
W. L. Ritchie, Nominee of the Employer
Brian Hunt, Nominee of the Union

APPEARANCES: G. D. Parkinson for the Employer
Mel Myers Q.C. for the Union

ISSUE: (1) Policy Grievance 2:3124
(2) Job Posting 5:2520
(3) Vacancies 5:2510

DATE DECISION RENDERED: Nov. 26, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
This was a policy grievance initiated by the Union alleging that the Employer had failed to post a Lead Hand position as required by Section 5.08 of the Collective Agreement. Section 5.08 reads in part:

> "In the event that an opportunity for promotion or preferred job occurs in the plant, notice of the open position shall be posted on the board for a period of 5 days."

The Union argued that the Lead Hand position in question was a newly created position with more responsibility and pay attached to it than any other positions. As such it would be considered by the employees of the company to be a preferred position, therefore, should have been posted.

The Employer argued that a Lead Hand was not a distinct job or classification. A Lead Hand was a regular employee chosen to perform extra duties in addition to his regular workload and was paid a 30¢/hr. premium. Since the Lead Hand position was not a 'position' in and of itself, Section 5.08 did not apply.

AWARD:
Upon examination of evidence presented at the hearing and the Collective Agreement, the Board concluded that a Lead Hand was not a distinct classification. It could, therefore, be considered a postion for which employees could apply and hence did not have to be posted. The grievance was dismissed.

AUTHORITIES: Many authorities were cited by counsel in this case.

FILE NO. AA85-11-005

EMPLOYER: Inco Ltd.,

UNION: United Steelworkers of America, Local 6166

ARBITRATOR: Jack M. Chapman, Q.C.

APPEARANCES: Milt Christianson for the Employer
Patrick Fogarty for the Union

ISSUE:
(1) Overtime 5:3200
(2) Persons normally performing the work 5:3222
(3) Assignment of Bargaining Unit Work to Non-Unit Employees 5:1400
(4) Proprietary Rights to Overtime Assignments 5:3240
(5) Remedies 5:3240

DATE DECISION RENDERED: November 29th, 1985

EXPEDITED ARBITRATION Yes / x / No / /

CIRCUMSTANCES:
The grievor, employed in a mine alleged that he was denied the opportunity to work overtime as a Cagetender.

The Employer argued that on the day in question, they did not feel it necessary to call in a Cagetender. The anticipated degree of traffic did not warrant it. Further, several employees who were qualified Cagetenders were called into work that day and would be available to operate a cage as needed.

The Union argued that it was not the employees who were qualified Cagetenders who operated the cage on the day in question. One of the supervisors working that day operated the cage in violation of Section 3.02 of the Collective Agreement. This clearly showed that a Cagetender was needed.

AWARD:
The Arbitrator, upon examination of the evidence presented at the hearing concluded that a Cagetender should have been called in. The grievance succeeds.

AUTHORITIES: Re: Milk and Bread Drivers Local 647 and Purity Cooperative Dairy (1965) 16 L.A.C. 349; RE: United Steelworkers and Deloro Smelting and Refining Co. Ltd., 137; Inco Ltd., and United Steelworkers of America Local 6166, May 30th, 1978; Inco Ltd. and United Steelworkers of America Local 6166, Jan. 26. 1978; The International Nickel Company of Canada Ltd. and United Steelworkers of America, Local 6166, Sept 30, 1980; RE: Alcan Smelters and Chemicals Ltd. and Canadian Association of Smelter and Allied Workers Local, (1979) 23 L.A.C. (2d) 123; The Mines Act.

FILE NO. AA85-11-006

EMPLOYER: Interprovincial Co-Operative Ltd.,

UNION: Energy and Chemical Workers Union, Local 681

ARBITRATOR: Martin H. Freedman, Q.C.

APPEARANCES: G. D. Means for the Company
Russ Pratt for the Union

ISSUE:
(1) Discipline: Discharge: Notification of Absence 7:3110
(2) Doctrine of Culminating Incident 7:4310
(3) The Final Incident 7:4312
(4) Mitigating Factors 7:4400
(5) Reasonableness of Penalty 7:4300

DATE DECISION RENDERED: November 27th, 1985

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
The grievor was dismissed from employment as a formulator for being absent without notice. The company argued that because of the grievor's absence, which was during a peak production period, production suffered. Formulators from other shifts had to cover for him on an overtime basis, orders could not be filled on a timely basis and canning people were idle. In light of his past employment record, which included suspensions for similar incidents, the decision was made to discharge the grievor. The company further contended that as a senior union official, the grievor was well aware of his duty to advise them as to his absences. The union argued that while the grievor's conduct warranted some disciplinary action, discharge was too harsh a penalty to impose. The grievor had very compelling reasons to be absent from work which should have been taken into consideration when the decision to impose a disciplinary penalty was made.

AWARD:
The Board felt that in light of the very difficult and compelling situation which necessitated the grievor's absence from work, discharge was not the appropriate penalty to impose. Since the grievor's conduct was very costly to the company, however, the Board ruled that the appropriate penalty would be a lengthy suspension. A 10 month suspension was substituted for the discharge.

FILE NO. AA85-12-001

EMPLOYER: Manfor Ltd.

UNION: Canadian Paperworkers Union, Local 1403

ARBITRATOR: Paul S. Teskey

APPEARANCES: G. Mitchell for the Employer
Mel Myers, Q.C. for the Union

ISSUE:
(1) Discipline: Discharge: Assault 7:3430
(2) Doctrine of Culminating Incident 7:4310
(3) The Final Incident 7:4312
(4) Mitigating Factors: Compassion 7:4424
(5) Use of Prior Record 7:4314

DATE DECISION RENDERED: December 5th, 1985.

EXPEDITED ARBITRATION Yes / / No /x/

CIRCUMSTANCES:
The grievor was discharged from employment for physically abusing and threatening a fellow employee, insubordination and dishonesty. The union argued that while the gievor's misconduct warranted some disciplinary action, discharge was too severe a penalty to impose. Mitigating circumstances such as the effect of the discharge on the grievor's future employment dicatated the imposition of a lesser penalty such as suspension. The Company argued that in light of the grievor's past employment record which included warnings and suspensions for insubordintion, misconduct and absenteeism, discharge was the most appropriate penalty to impose.

AWARD:
The Arbitrator concluded, upon examination of the evidence presented at the hearing, that given the seriousness of the grievor's misconduct and his dismal employment record, the substitution of a lesser penalty was not warranted. The grievance was dismissed.

AUTHORITIES: Re: British Columbia Telephone Company and the Tele-communications Workers' Union (1978), 18 L.A.C. 2d 225; RE: Toronto East General Hospital Inc. and Service Employees International Union (1975) 9 L.A.C. (2d) 311 at p324; Steel Equipment Co. Ltd. (1964) 14 L.A.C. 356 (Reville) 356-8.

FILE NO. AA85-12-002

EMPLOYER: St. Boniface General Hospital

UNION: Manitoba Food and Commercial Workers, Local 832

ARBITRATOR: Donald G. Baizley, Q.C.

APPEARANCES: Christian Malburg, Counsel for the Employer
Donald Primeau, Counsel for the Union

ISSUE: (1) Premium Rates and Bonuses 8:2000
(2) Object of Construction: Intention of the Parties 4:2100

DATE DECISION RENDERED: December 12th, 1986

EXPEDITED ARBITRATION Yes / x / No / /

CIRCUMSTANCES:

The grievor, employed as a Cook III at the hospital alleged that he was subjected to a shift change without proper notice and as such was entitled to a shift change pay premium (Article 20.05 of the collective agreement). The Collective Agreement did not contain a definition of shift change.

The Employer argued that a shift change meant that both the start and finish times of a scheduled shift changed. Since the grievor's starting time changed but his finishing time did not, he was not entitled to the shift change premium defined in article 20.05.

AWARD:

The Arbitrator concluded that the Emloyer's definition of a shift change was unreasonable. If the Employer's interpretation of Clause 20.05 of the agreement was accepted, the grievor would have made more money working 8 hours than he earned working 9 3/4 hours. The grievance was allowed.

FILE NO. AA85-12-003

EMPLOYER: City of Winnipeg

UNION: Canadian Union of Public Employees, Local 500

BOARD: Martin Freedman, Q.C.
Sharon Seabourne
Colin Trigwell

APPEARANCES: Marvin Samphir for the Employer
Mel Myers for the Union

ISSUE:
(1) Work Hours and Shifts 5:3100
(2) Application of Seniority 6:2000
(3) Management Rights 4:2310
(4) Company Rules 4:1500
(5) Management's Duty to Act Fairly 4:2320

DATE DECISION RENDERED: Dec. 12, 1985

EXPEDITED ARBITRATION Yes / ___ / No / x /

CIRCUMSTANCES:
A part time Instructor Guard III was denied the opportunity to work her preferred shift from 12 noon to 4:00 p.m.. The shift was given to a male Instructor Guard with less seniority than the grievor. A grievnce alleging a violation of articles 3 and 21 of the collective agreement was initiated (discrimination, seniority).

The City argued that all the Instructor Guards working that shift were female. It was their view that at least one male guard should be working that shift. The male employee was needed to carry out certain functions in the male locker room including assisting patrons and handling medical emergencies. The City further contended that under the Management rights provision of the collective agreement it was entitled to decide who would staff the pool and when.

AWARD:
Evidence presented at the hearing indicated that shifts at many different pools were staffed by guards of one sex only without significant problems occuring. The pool in question was not significantly different in terms of clientele served than the other pools. The Board concluded therefore that there was no evidence to support the City's contention that in the interests of public decency and business operations, the pool required a male instructor guard during the hours from 12 noon to 4:00 p.m. The Board further concluded that while the City, pursuant to the management rights clause, was entitled to make rules and regulations for the operation of the 'company', it could not invoke rules/regulations which interfere with the rights of employees as defined in the collective agreement. The grievance was allowed.

AUTHORITIES: RE United Parcel Service Canada Ltd. and Teamsters Union, Local 141 (1981) 29 L.A.C. (2d) 202; Central Okanagan Health Care Society and Canadian Union Employees, Local 338, (1981).

FILE NO. AA85-12-004

EMPLOYER: City of Winnipeg

UNION: Winnipeg Police Association

ARBITRATOR: Lawrie Cherniack

APPEARANCES: Marvin Samphir for the Employer
A. R. McGregor Q.C. Councel for the Union

ISSUE:
(1) Discipline: Discharge: Deviant Behavior 7:3400
(2) Doctrine of Culminating Incident 7:4310
(3) The Final Incident 7:4312
(4) Use of Prior Record 7:4314
(5) Employer Conduct 7:4410
(6) Scope of Review 7:4100 - and others

DATE DECISION RENDERED: December 12th, 1985

EXPEDITED ARBITRATION Yes / x / No / /

CIRCUMSTANCES:
The grievor was suspended and subsequently discharged from employment as a police officer for, among other things, alleged dishonesty, disorderly conduct while off duty and unprofessional conduct while in uniform.

The Employer argued that these offences/indicents when considered in light of the grievor's dismal employment record were more than adequate grounds for dismissal.

The grievor denied virtually any wrongdoing.

AWARD:
Evidence presented at the hearing indicated that the grievor had in fact engaged in unprofessional conduct while in uniform, a serious offence under the regulations governing the police department. The Employer was therefore, entitled to impose some disciplinary action and to review the grievor's employment record to determine the appropriate penalty. An examination of the grievor's employment record by the Arbitrator revealed that the grievor had on several previous occasions engaged in unprofessional conduct (even criminal conduct). He was therefore, deemed unfit to be a police officer and the dismissal was upheld.

AUTHORITIES: See attached award.

FILE NO. AA85-12-005

EMPLOYER: Canada Packers Ltd.

UNION: United Food and Commercial Workers Union, Local 111

ARBITRATOR: Paul S. Teskey

APPEARANCES: D. Newman for the Employer
C. Trigwell for the Union

ISSUE: (1) Application of Seniority: Bumping 6:2330
(2) Skill and Ability Requirement 6:3000
(3) Trial, Training and Familiarization Periods 6:3230

DATE DECISION RENDERED: December 15th, 1985

EXPEDITED ARBITRATION Yes / x / No / /

CIRCUMSTANCES:
The grievor, a mechanic employed by the repair department to work in the smoked meat section of the plant, was bumped into the night shift by a more senior mechanic. For personal reasons, the grievor very much wished to work the day shift and requested an exchange with the junior mechanic working the day shift in the retail ready department. The request was denied and a grievance alleging a violation of Article 15(6)B of the Collective Agreement was initiated.

The Company argued that according to Article 15(6)B for a shift exchange to take place, the employees involved must be performing the same (as in identical) job. A mechanic in the smoked meat section performed work which required a greater degree of skill, training and experience than a mechanic in the retail ready section as the equipment used was more sophisticated. To place the junior employee in a position which the company felt required more skill, training and experience than his other position, could adversely affect production and production schedules.

The Union argued that the junior mechanic had the basic skills, training and experience required to perform the maintenance work in the smoked meat section. With a reasonable training and familiarization period provided, he could quickly become proficient in the job.

AWARD:
The Arbitrator upon examination of the evidence presented at the hearing and the collective agreement concluded that the grievor and the junior mechanic were not performing jobs which were identical or nearly identical as required by the Collective Agreement. Further, Section 15(6)B did not contemplate the provision of a training/familiarization period when a shift change took place. The Company was therefore, not obligated to provide one for the junior mechanic. The grievance was dismissed.

AUTHORITIES: Re Printing Specialties and Paper Products Union Local 520 and Nashua Canada Ltd., (1965), 15 L.A.C. 448 (Arrell); Re British Leaf Tobacco Co. of Canada and Canadian Union of Operating Engineers and General Workers (1981) 3 L.A.C. 3d 235 (Kennedy); Re Suncor Inc., and McMurray Independent Oil Workers, Local (1983), 13 L.A.C. (3d) 432 (Mason).

FILE NO. AA85 12-006

EMPLOYER: Canada Packers Ltd.

UNION: United Steelworkers of America, Local 6166

ARBITRATOR: Paul S. Teskey

APPEARANCES: M. Christianson for the Employer
C. Hills for the Union

ISSUE: (1) Overtime 5:3200
(2) Persons Normally Performing the Work 5:3222
(3) Proprietary Rights to Overtime Assignments 5:3220

DATE DECISION RENDERED: December 15th, 1985

EXPEDITED ARBITRATION Yes / x / No / /

CIRCUMSTANCES:
The grievor, a Furnace Operator alleged that he was denied the opportunity to work a shift scheduled on a statutory holiday.

The Employer argued that based on well established past practice, it identified its staff needs that day as 2 furnace operators and one helper. The Employer further argued that under the management rights provision of the collective agreement, it was entitled to determine its manpower requirements provided it acted reasonably and in good faith.

The Union argued that the helper/assistant called in to work that day had performed the work normally done by an operator. A third operator therefore, rather than a helper should have been scheduled to work.

AWARD:
Evidence presented at the hearing indicated that the Employer had not expected the helper to perform the work of an operator nor was he asked to do so. There was really no need for a third furnace operator. The grievance was dismissed.

AUTHORITIES: Re Alcan Smelters and Chemicals Ltd. and Canadian Association of Smelter and Allied Workers, Local 1 (1979) 23 L.A.C. (2d) 123.

FILE NO. AA85-12-007

EMPLOYER: City of Winnipeg

UNION: Canadian Union of Public Employees, Local 2509

ARBITRATOR: Martin H. Freedman

APPEARANCES: Paul Teskey for the Employer
Robb Tonn for the Union

ISSUE: Scheduling Vacations 8:3240

DATE DECISION RENDERED: December 16, 1985

EXPEDITED ARBITRATION Yes / / No / /

CIRCUMSTANCES:
The grievor was denied her preferred vacation period. The Employer had allocated that time to a person employed by the hospital but not within the scope of the bargaining unit and who was junior in tenure to the grievor. A grievance alleging a violation of Article 15 of the Collective Agreement (Annual Vacations) was initiated.

The Employer argued that the operational requirements of the department dictated that 2 employees could not take their vacation at the same time. In deciding which of the employees should be allowed to take the vacation period requested, the Employer considered the indivdual circumstances of each employee. The grievor, it was ascertained was relatively flexible with respect to her vacation plans. The decision was made therefore, to allow the non unit employee to take her vacation.

AWARD:
The Arbitrator concluded that in this instance (because the work roles of the 2 employees were relatively unrelated), the Employer should not have considered the grievor's request for a particular vacation period in relation to that of a non unit employee. The grievance succeeds.

AUTHORITIES: Re Sudbury Broadcasting Co. Ltd. and National Association of Broadcast Employees and Technicians (1972) 1 L.A.C. 130; Re United Parcel Service Canada Ltd. and Teamsters Union, Local 141, 29 L.A.C.-(2d) 202.

FILE NO. AA85-12-008

EMPLOYER: Local Government District of Churchill

UNION: United Steelworkers of America, Local 8660

ARBITRATOR: Jack M. Chapman

APPEARANCES: Harold Piercy for the Employer
A. Plaskett for the Union

ISSUE: (1) Discipline: Discharge: Absent Without Notice 7:3110
(2) Doctrine of Culminating Incident 7:4310
(3) Scope of Review 7:4100
(4) Reasonableness of Penalty 7:4300

DATE DECISION RENDERED: December 31, 1985

EXPEDITED ARBITRATION Yes / x / No / /

CIRCUMSTANCES:
The grievor was dismissed from employment as a Sewer and Water Maintenance worker for being absent from work without notice. The grievor requested that he be reinstated and that a lesser penalty be imposed for his infraction.

The Employer argued that this was the 6th time the grievor had been absent without authorization. He had been warned and suspended for this in the past. He was also advised that if his attendance did not improve, dismissal could result. Since the grievor failed to improve his attendance record, the Employer felt dismissal was warranted.

AWARD:

The Arbitrator, after a consideration of the evidence presented at the hearing ruled that the dismissal be upend. Considered the multitude of offences committed by the grievor, the many cautions and warnings he had been given and his previous suspensions, the substitution of a lesser penalty was not warranted.

AUTHORITIES: Re Teamsters, Local 880 and McCallum Transport Ltd. (1957) 7 L.A.C. 329; Re Gates Rubber of Canada Ltd. and United Rubber Workers Local 773 (1978) 20 L.A.C. (2d) 229; Re Continuous Colour Coat Ltd., and United Steelworkers (1975) 9 L.A.C. (2d) 326; Re Corporation of City of Stratford and C.U.P.,E., Local 1385 (1976) 14 L.A.C. (2d) 84; and others.

Grievance arbitration awards filed with the Manitoba Labour Board have been indexed for the purpose of this report according to specific issues in dispute and to one or more key areas of labour relations to which that issue corresponds. The key areas of labour relations used in this report are:

(i) The operation and interpretation of collective agreements;

(ii) The organization and direction of the workplace;

(iii) Seniority;

(iv) Discipline;

(v) Compensation, and;

(vi) Union rights and liabilities.

This system was developed using Canadian Labour Arbitration, a text by Donald J.M. Brown Q.C. and David M. Beatty, (Faculty of Law, University of Toronto), which provides a guide to the general principles of grievance arbitration in the aforementioned areas of labour relations.

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